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MICHAEL RODAK, JR.,

(22-D) **APPENDIX**

IN THE

Supreme Court of the United States

October Term, 1972

Nos. 72-792, 72-802

New York State Department of Social Services; its Commissioner, ABE LAVINE; New York State Department of Industrial Relations; its Commissioner, LOUIS LEVINE; Erie County Department of Social Services and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

v.

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

Onondaga County Department of Social Services and its Commissioner, JOHN L. LASCARIS,

Appellants,

v.

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Filed November 29, 1972 and December 1, 1972
Probable Jurisdiction Noted January 15, 1973

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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Docket Entries.

Civil Docket

UNITED STATES DISTRICT COURT

Civil 1971-306

Jul 1-71 Filed Complaint (Class Action Motion Granted 8/6/71.)

Jul 1-71 Filed Pltfs'., Motion for leave to serve complaint and related motions.

Jul 1-71 Filed Order appointing process server-Curtin, *J.*

Jul 1-71 Filed Pltfs'., Motion for leave to file *in forma pauperis.*

Jul 1-71 Filed Order granting leave to file *in forma pauperis*—Curtin, *J.*

Jul 1-71 Filed Order to Show Cause for Temporary Restraining Order, etc.—Curtin, *J.* ret. 7/2/71—Granted to named Pltfs.

Jul 1-71 JS 5 made only—motion to convene 3 Judge Court & Motion for class action—adj. 7/9/71.

Jul 1-71 Issued summons & 7 copies (service to be made by atty.)

Jul 2-71 Filed Affidavit of Michael A. O'Connor.

Jul 9-71 Filed Order granting Pltfs' motion and Temporary Restraining Order—Curtin, *J.*

Jul 9-71 Filed Affidavit of State Defts. in opposition to preliminary injunction and to convening of three-judge court.

Jul 9-71 Filed Pltfs' Affidavits of Service-Show cause order and summons & complaint served 7/1/71 on N. Y. S.

Atty. General and Dept. of Industrial Relations, George G. Sipprell and Fred Discaglio.

Jul 9-71 Filed Affidavit of Mary Archambault.

Jul 9-71 Filed Affidavit of Rose Bellegia.

Jul 9-71 Filed Affidavit of Dock Daniels.

Jul 9-71 Filed Affidavit of Ralph Emerich.

Jul 9-71 Filed Affidavit of Doreen Guest.

Jul 9-71 Filed Affidavit of Walter Kurkoski.

Jul 9-71 Filed Affidavit of Constance McNair.

Jul 9-71 Filed Affidavit of Mildred Prim.

Jul 9-71 Filed Affidavit of Reyes Rodriguez.

Jul 9-71 Filed Affidavit of Minerva Romera.

Jul 9-71 Filed Affidavit of Ida Mae Watts.

Jul 9-71 Filed Affidavit of Linda Wilson.

Jul 14-71 Filed State Defts.' Motion to dismiss complaint—ret. 7/16/71.

Jul 16-71 Filed Affidavit of Dennis R. Yeager.

Jul 19-71 Filed Affidavit of James C. Meagher.

Jul 21-71 Filed Affidavit of Wilbur B. Pittinger, Jr.

Jul 9-71 Motion for class action & motion by Deft., for 3 judge court-briefs to be submitted by Pltf. 7/14/71-adj. 7/16/71

Jul 16-71 Motion by Pltfs. for class action-dec. resvd. Motion by Pltfs., for temporary restraining order to apply to all members of the class-decision reserved.

Docket Entries.

Jul 26-71 Filed Affidavit of Michael A. O'Connor.

Jul 26-71 Filed Temporary Restraning Order—Curtin, *J.*

Aug 2-71 Filed Pltfs'., Notice to Produce.

Aug 4-71 Filed Affidavit of Service of Michael A. O'Connor.

Aug 4-71 Filed Affidavit of Service of David M. Klein.

Aug 4-71 Filed Affidavit of Robert D. Kolken.

Aug 4-71 Filed Affidavit of Gloria J. McFarland.

Aug 4-71 Filed Temporary Restraining Order—Curtin, *J.* (notice & copy of Jean Coon & Mr. Casey).

Aug 6-71 Filed Pltfs'. First Interrogatories to Defts. New York State Department of Social Services, George K. Wyman, Erie County Department of Social Services and George G. Sipprell.

Aug 6-71 Filed Pltfs'. First Interrogatories to Defts. New York State Department of Labor and Louis L. Levine.

Aug 6-71 Filed Pltfs'. Affidavit of Service.

Aug 6-71 Filed Decision & Order denying Defts. motion to dismiss complaint; granting Pltfs. motion for class action; directing Defts. to post notices in appropriate form; requesting the convening of a three-judge court and denying Pltfs. motion for a temporary restraining order with respect to each member of the class—Curtin, *J.* (copy given to Mr. O'Connor) (notice & Copy to Messrs. Yeager, Coon & Gambacorta).

Aug 6-71 Filed Affidavit of Douglas A. Eldridge.

Aug 6-71 Filed Temporary Restraining Order—Curtin, *J.*

Docket Entries.

Aug 9-71 Filed Affidavit of John Edgar *re* James More.

Aug 9-71 Filed Affidavit of John Edgar *re* Stan Fleming.

Aug 9-71 Filed Affidavit of John Edgar *re* Robert Allen.

Aug 9-71 Filed Affidavit of Harriet Rose.

Aug 9-71 Filed Temporary Restraining Order—Curtin, *J.*

Aug 10-71 Filed Pltfs'. Notice of Deposition.

Aug 10-71 Filed Pltfs'. Affidavit of Service.

Aug 11-71 Filed Designation of Judges-Kaufman, Acting Chief Judge-CCA (notice to order of 12/21/71 & copy to Messrs. O'Connor, Yeager, Gambacorta and Jean Coon).

Aug 23-71 Filed Pltf's. Affidavit in Support of Intervention.

Aug 23-71 Filed Temporary Restraining Order-Curtin, *J.*

Aug 24-71 Filed Pltf's. Affidavit of Service.

Aug 26-71 Filed Deft., New York State, Answer.

Aug 27-71 Filed Pltfs'. Notice of Deposition & Affidavit of Service.

Sept 1-71 Filed Pltfs'. Notice of Deposition of Deft., NY State Dept. of Social Services through Joseph Fitzsimmons.

Sept 1-71 Filed Pltfs'. Notice of Deposition of Deft., N. Y. State Dept. of Social Services thru Francis C. Schreck.

Sept 1-71 Filed Pltfs'. Notice of Deposition of Deft., NY State Dept. of Labor.

Docket Entries.

Sept 1-71 Filed Pltfs'. Notice of Deposition of Deft., Erie County Dept. of Social Services.

Sep 3-71 Filed Affidavit of Harold H. Levene (copies to Jean Coon, Messrs. O'Connor, Gambacorta & Nathanson per request contained in ltr. of Pltfs'. Atty. Dtd. 9-2-71).

Sep 3-71 Filed Temporary Restraining Order—Curtin, *J.* (notice & copy to Jean Coon, Messrs. O'Connor, Gambacorta & Nathanson).

Sep 3-71 Filed Intervenor's Notice of Argument & Motion to Intervene as a Defendant-ret. 9-17-71-Granted.

Sep 13-71 Filed Pltfs'. Supporting Affidavits, Exhibits & Order to Show Cause for Contempt of Court for failure to obey judgments-ret. 9-17-71-Denied; Motion for damages-Withdrawn.

Sep 16-71 Filed Defts., New York State, Affidavit in opposition to Motion to punish for contempt.

Sep 16-71 Filed Defts., New York State, Affidavit in support of Motion to intervene as defendant

Sep 17-71 Filed Pltfs'. Affidavit of Service.

Sep 17-71 Filed Pltfs'. Affidavit of Personal Service.

Sep 17-71 Filed Pltfs'. Affidavit of Douglas A. Eldridge.

Sep 17-71 Filed Deft., Lascaris, Affidavit in Opposition.

Sep 22-71 Filed Pltfs'. Affidavit re JoAnn Scott & Clara Bornatimer.

Sep 22-71 Filed Temporary Restraining Order re JoAnn Scott & Clara Bornatimer-Curtin, *J.*

Sep 22-71 Filed Affidavit of Virginia Schuler, Atty. for Pltf., Betty Glenn.

Sep 22-71 Filed Temporary Restraining Order *re* Betty Glenn-Curtin, *J.*

Sep 22-71 Filed Pltfs'. Affidavit *re* Betty Sallis.

Sep 22-71 Filed Affidavit of Petty Sallis.

Sep 22-71 Filed Temporary Restraining Order *re* Betty Sallis-Curtin, *J.*

Sep 22-71 Filed Affidavit of Beverly Stone.

Sep 22-71 Filed Temporary Restraining Order *re* Beverly Stone-Curtin, *J.*

Sep 22-71 Filed Pltfs'. Affidavit in Support of Intervention *re* James Barrett, Richard A. Chambers, Sr., Mark Eames & Laurence Wagoner.

Sep 22-71 Filed Temporary Restraining Order *re* James Barrett, Richard A. Chambers, Mark Eames & Laurence Wagoner-Curtin, *J.*

Sep 28-71 Filed Order granting John L. Lascaris and Onondaga County Department of Social Services to intervene as a Deft., and denying Pltfs'. motion to hold Defts., in contempt of court-Curtin, *J.* (notice & Copy to Jean Coon & Virginia Schuler and Messrs. O'Connor, Yeager, Nathanson & Karp).

Sep 29-71 Filed Affidavit of Michael A. O'Connor, Attorney for Charlotte Jimerson and Laura Gilbert.

Sep 29-71 Filed Temporary Restraining Order *re* Charlotte Jimerson and Laura Gilbert-Curtin, *J.*

Sep 29-71 Filed Affidavit of Munira Rahim.

Docket Entries.

Sep 29-71 Filed Temporary Restraining Order *re* Munira Rahim-Curtin, *J.*

Sep 29-71 Filed Affidavit of Linda Sargent.

Sep 29-71 Filed Temporary Restraining Order *re* Linda Sargent-Curtin, *J.*

Oct 4-71 Filed Pltfs'. Notice of Deposition.

Oct 7-71 Filed Pltfs'. Notice of Deposition.

Oct 13-71 Filed Affidavit of Michael A. O'Connor *re* Norman Michael & Elvira Michael.

Oct 13-71 Filed Affidavit of Georgia Cassell.

Oct 13-71 Filed Affidavit of Michael A. O'Connor *re* Lillie Harris.

Oct 13-71 Filed Temporary Restraining Order *re* Norman Michael, Elvira Michael, Georgia Cassell and Lilli Harris-Curtin, *J.*

Oct 13-71 Filed Affidavit of Donna Bieliski.

Oct 13-71 Filed Temporary Restraining Order *re* Donna Bieliski-Curtin, *J.*

Oct 13-71 Filed Affidavit of Dorothy Livingston.

Oct 13-71 Filed Temporary Restraining Order *re* Dorothy Livingston-Curtin, *J.*

Oct 13-71 Filed Affidavit of Gladys Taylor.

Oct 13-71 Filed Temporary Restraining Order *re* Gladys Taylor-Curtin, *J.*

Oct 22-71 Filed Pltfs'. Affidavits in Support of Intervention of Harold Luce, Una Luce, William Morgan, Linda Morgan, Peter Plarre and Mary Ethel Goodman.

Docket Entries.

Oct 22-71 Filed Temporary Restraining Order *re* Harold Luce, Una Luce, William Morgan, Linda Morgan, Peter Plarre and Mary Ethel Goodman-Curtin, *J.*

Oct 29-71 Filed Affidavit of Michael A. O'Connor *re* Beverly Waldron, Valeria Cray and Linda Cray & Affidavit of Henrietta Smith.

Oct 29-71 Filed Temporary Restraining Order *re* Beverly Waldron-Curtin, *J.*

Oct 29-71 Filed Temporary Restraining Order *re* Valeria Gray, Linda Cray & Henrietta Smith-Curtin, *J.*

Nov 8-71 Filed Affidavit of Florence McMahon.

Nov 8-71 Filed Temporary Restraining Order *re* Florence McMahon-Curtin, *J.*

Nov 8-71 Filed Pltfs'. Affidavit *re* Billy White & Betty White.

Nov 8-71 Filed Temporary Restraining Order *re* Billy White & Betty White-Curtin, *J.*

Nov 8-71 Filed Affidavit of Ellen Rivenburgh.

Nov 8-71 Filed Temporary Restraining Order *re* Ellen Rivenburgh-Curtin, *J.*

Nov 8-71 Filed Pltfs'. Affidavits *re* Clinton Braction, Jr.

Nov 8-71 Filed Temporary Restraining Order *re* Clinton Brachtion-Curtin, *J.*

Nov 9-71 Filed Order to Show Cause for Temporary Restraining Order, etc.-Curtin, *J.* ret. 11-19-71-submitted. Status Report adj. 12-17-71-Pltf. Briefs by 1-17-72-Reply briefs by 2-1-72 Arguments at later date.

Docket Entries.

Nov 19-71 Filed Defts'., New York State, Affidavit.

Nov 22-71 Filed Pltfs'. Affidavit *re* Ernest Shaffer and Phyllis Shaffer.

Nov 22-71 Filed Temporary Restraining Order *re* Ernest Shaffer and Phyllis Shaffer-Curtin, *J.*

Nov 24-71 Filed Affidavit of Mary Coleman.

Nov 24-71 Filed Pltfs'. Affidavit *re* Dolores Troy.

Nov 24-71 Filed Temporary Restraining Order *re* Mary Coleman and Dolores Troy-Curtin, *J.*

Dec 14-71 Filed Affidavit of Robin L. Gray.

Dec 14-71 Filed Temporary Restraining Order *re* Robin L. Gray-Curtin, *J.*

Dec 15-71 Filed Pltfs'. Affidavit *re* Chester Conklin and June Conklin.

Dec 15-71 Filed Decision & Order denying Temporary Restraining Order *re* Chester Conklin and June Conklin-Curtin, *J.* (notice & copy to Mr. O'Connor and Jean Coon)

Dec 15-71 Filed Affidavit of Rollin Shaw.

Dec 15-71 Filed Decision & Order denying Temporary Restraining Order *re* Rollin Shaw-Curtin, *J.* (notice & Copy to Mr. O'Connor and Jean Coon).

Dec 17-71 Filed Deposition of Mervyn Schwartz, Willie Mae Keaton and George J. Demmon (notice to attorneys).

Dec 17-71 Filed Deposition of Edwin L. Nowak and Janet Stroman (Notice to attys).

Dec 17-71 Filed Deposition of Edward Phillips (notice to attorneys).

Dec 17-71 Filed Deposition of Herbert Simon and Nelson Hopper (Notice to attys.)

Dec 17-71 Filed Deposition of Jule M. Sugarman (notice to attorneys).

Dec 17-71 Filed Reply of Deft., George G. Sipprell, as Comm. of the Erie County Dept. of Social Services to Pltf's. First Interrogatories.

Dec 17-71 Filed Defts'., New York State Department of Labor and Louis L. Levine, Answer to Interrogatories.

Dec 17-71 Filed Defts'., State Department of Social Services and Commissioner Wyman, Answers to Pltfs'. First Interrogatories.

Dec 21-71 Filed Affidavit of Carole Kampshoff.

Dec 21-71 Filed Temporary Restraining Order *re* Carole Kampshoff-Curtin, *J.*

Dec 21-71 Filed Affidavit of Anna Callahan.

Dec 21-71 Filed Temporary Restraining Order *re* Anna Callahan-Curtin, *J.*

Dec 21-71 Filed Order convening three-judge panel on 2-24-72 and setting forth dates for filing of briefs, etc.-Curtin, *J.* (notice & Copy to Messrs. O'Connor, Yeager, Lefkowitz-attn. Jean Coon, Koldin and Gambacorta).

Dec 23-71 Filed Affidavit of Rose Marie Ojeda, Roland Ojeda & Reynold Ojeda.

Dec 23-71 Filed Temporary Restraining Order *re* Rose Marie Ojeda, Roland Ojeda and Reynold Ojeda-Curtin, *J.*

Jan 7-72 Filed Affidavit of Annie Ruth Ford and Temporary Restraining Order-Curtin, *J.*

Docket Entries.

Jan 17-72 Filed Pltfs'. Memorandum of Law.

Jan 17-72 Filed Pltfs'. Affidavit of Service of Memorandum of Law.

Jan 18-72 Filed Deposition of Philip C. Pinsky (notice to attys.)

Jan 18-72 Filed Temporary Restraining Order *re* Patricia Elkins-Curtin, *J.*

Feb 1-72 Filed Temporary Restraining Order *re* Glenn Wilson with endorsement by Judge Curtin denying application for an order.

Feb 2-72 Filed Pltfs'. Stipulations of Fact.

Feb 7-72 Filed Defts'. New York State, Memorandum of Law.

Feb 7-72 Filed Temporary Restraining Order *re* Helen Kilduff with endorsement by Judge Curtin denying application for a T. R. O.

Feb 7-72 Filed Temporary Restraining Order *re* Suzanne Spillman & Charles Spillman with endorsement by Judge Curtin denying application for a T. R. O.

Feb 17-72 Filed Temporary Restraining Order *re* Ellen Clark with endorsement by Judge Curtin denying application for a T. R. O.

Feb 18-72 Filed Pltfs'. Reply Memorandum of Law.

Feb 18-72 Filed Pltfs'. Affidavit of Service of Reply Memorandum of Law.

Feb 22-72 Filed Pltfs'. Exhibits.

Feb 22-72 Filed Exhibit 32.

Feb 22-72 Filed Exhibit 33.

Docket Entries.

Feb 22-72 Filed Exhibit 34.

Feb 22-72 Filed Exhibit 35.

Feb 22-72 Filed Exhibit 43.

Feb 22-72 Filed Exhibit 45.

Feb 22-72 Filed Exhibit 46.

Feb 22-72 Filed Pltfs'. Affidavit of Service of List of Exhibits.

Feb 24-72 Filed Affidavit of Elizabeth Wickenden.

Feb 24-72 Filed Affidavit of Service of Elizabeth Wickenden.

Feb 24-72 Filed Stipulation *re* filing briefs *amicus curiae* by National Assembly for Social Policy & Development Inc.

Feb 24-72 Filed Brief submitted by The National Assembly for Social Policy and Development, Inc.

Feb 24-72 Three Judge Court convenes: Present: Hon. James L. Oakes, CCA, Hon. John O. Henderson, DJ and Hon. John T. Curtin, DJ-Decision Reserved.

Mar 3-72 Filed Depositions of Stan Fleming, John Cooper & Bertha Heath (notice to Jean Coon & Messrs. O'Connor, Yeager, Koldin & Gambacorta).

Mar 6-72 Filed Brief on behalf of National Welfare Rights Organization, City Wide Coordinating Committee of Welfare Organizations, Upstate Welfare Rights Organization as *Amicii Curiae*.

Mar 13-72 Filed letter dated 3-9-72 to Judge Curtin from Jean M. Coon, Asst. Solicitor General, State of N. Y.

Mar 31-72 Filed Affidavit of Florence Reeder.

Docket Entries.

Mar 31-72 Filed Temporary Restraining Order *re* lorence Reeder-Curtin, *J.*

Apr 28-72 Filed Affidavit of Laura Duffy.

Apr 28-72 Filed Temporary Restraining Order *re* aura Duffy with endorsement by Judge Curtin denying ap-lication for a T. R. O.

May 8-72 Filed Affidavit of Etta Armstrong.

May 8-72 Filed Order to Show Cause *re* Etta Arm-rong-Curtin, *J.* ret 5-16-72; 5-17-72 Pltf. to submit emorandum.

May 17-72 Filed Defts'. Affidavit in opposition to emporary Restraining Order.

Jun 14-72 Filed Decision and Order denying ap-lication of Etta Armstrong for a temporary restraining or-er-Curtin, *J.* (notice & Copy to Messrs. O'Connor and efkowitz and to Ms. Balen).

Jul 28-72 Filed Decision and Order enjoining peration of state Work Rules as applied to recipients of id to Families with Dependent Children and directing that ederal Work Incentive Program procedures be followed nd further directing state to implement, within 30 days of ling this decision, a suitable means of informing recipients Home Relief of hearing rights were such recipients are grieved by a determination of employability, and further recting Clerk to enter judgment seven days after filing cision-James L. Oakes, C. J.; Henderson and Curtin, DJ otice & copy to Ms. Coon and Messrs. O'Connor, Freed, oldin and Stamm).

Aug 1-72 Filed Order amending order entered 7-28-72 hereby counsel for pltfs, are directed to prepare and sub-

mit judgment to court, upon notice to counsel for defts., within ten days of date of this order-Curtin, *J.* (notice & Copy to Ms. Coon and Messrs. O'Connor, Freed, Koldin and Stamm).

Aug 7-72 Filed Pltf's. Affidavit of Service.

Aug 25-72 Filed Order & Judgment declaring New York Work Rules unconstitutional insofar as they apply to applicants of AFDC; that from 60 days after date of this order Defts., are permanently enjoined & directed to cease all enforcement of NY Work Rules against recipients of & applicants for AFDC; directing delivery of checks for AFDC benefits by mail, such delivery to commence within 60 days of the date of this order; dismissing Pltfs'. First, Second & Third Causes of Action except that with respect to Pltfs'. Second Cause of Action, Defts., NYS, are directed to adopt & implement by 9-29-72 means of informing recipients of Home Relief, declared employable, of their right to a fair hearing; awarding Pltfs., costs by not attys. fees-Three Judge Court (Oakes, USCJ & Henderson & Curtin, DJ) (notice & copy to Ms. Coon and Messrs. O'Curtin, DJ) (notice & copy to Ms. Coon and Messrs. O'Connor, Freed, Koldin & Stamm).

Aug 25-72 JS 6 made.

Aug 28-72 Filed Pltfs'. Proposed Amendment to Pltfs'. Proposed Order.

Aug 28-72 Filed Pltfs'. Affidavit of Service.

Aug 30-72 Filed Pltfs'. Notice & Proposed Order.

Sep 5-72 Filed Affidavit of Julius C. C. Edelstein.

Sep 5-72 Filed Pltfs'. Affidavit of Service.

Sep 5-72 Filed Pltfs'. Motion to Amend Order (no ret. date)-9-19-72 submtd.

Docket Entries.

Sep 5-72 Filed Pltfs'. Affidavit of Service.

Sep 15-72 Filed Pltfs'. Affidavit.

Sep 19-72 Filed Civil Subpoena-served 9-14-72 George Demmon.

Sep 19-72 Filed Affidavit of Arthur L. Stern, III.

Sep 28-72 Filed Deft. New York State's Notice of Appeal to U. S. Supreme Court with affidavit of service on Messrs. O'Connor, Yeager, Pinsky and Stamm.

Oct 5-72 Filed Notice of Appeal to U. S. Supreme Court of Deft.—Intervenors Onondaga County Department of Social Services and its Commissioners John L. Lascaris with affidavit of service on Messrs. O'Connor, Yeager, Lefkowitz and Stamm.

Oct 11-72 Filed Affidavit of Richard S. Panebianco.

Oct 11-72 Filed Affidavit of R. Stephen Trosty.

Oct 11-72 Filed Copy of Ltr., from Michael A. O'Connor to Hon. John T. Curtin dtd. 10-11-72.

Oct 17-72 Filed Notice of Appeal to U. S. Supreme Court of Deft. Erie County Department of Social Services and its Commissioner George G. Sipprell with affidavit of service on Messrs. O'Connor, Yeager, Lefkowitz and Pinsky.

Oct 18-72 Filed Order amending Order of 8-25-72 by adding a paragraph after paragraph 2 and denying in all other respects Pltfs'. motion to amend order of 8-25-72-Three Judge Pltfs'. motion to amend order of 8-25-72-Three Judge Court (Oakes, USCJ & Henderson & Curtin, DJ) (noticed & copy to Messrs. O'Connor, Freed, Koldin, Erie Co. Atty. & Ms. Coon).

Docket Entries.

Oct 24-72 Filed Pltfs'. Notice of Appeal to U. S. Supreme Court with affidavit of service on Messrs. Lefkowitz, Stamm and Pinsky.

Oct 25-72 Filed Pltfs'. Bill of Costs taxed in the amount of $1,149.07 (notice to Messrs. O'Connor, Pinsky and Stamm and Ms. Coon).

Nov 14-72 Filed Order to Show Cause for Contempt of Court for failure to obey Judgment returnable Nov. 20, 1972, dtd. 11-13-72 Curtin *DJ.*

Nov 20-72 Filed Affidvt. of Gerald A. Norlander, atty. for Pltf. Evelyn Dillard.

Nov 20-72 Filed Affidvt. of Jean M. Coon, Asst. Solicitor Gen. NYS. in oppos. to pltfs. motion.

Nov 20-72 Return of Order to Show Cause. Adj. until such time as pltf's. Counsel submits letter to atty. for defts.

Dec 5-72 Filed Order that state defts. submit to Court and serve upon counsel for pltfs. no later than 12-18-72 afdvts. providing detailed comments on various points (7) & Counsel for pltfs may respond to afdvts. no later than 12-28-72 & upon receipt Court shall set date for hearing if appropriate. Curtin *DJ* Notice & copies to Mayer Freed, Jean Coon & Gregory Stamm.

Dec 20-72 Filed Defts. Affidavit pursuant to Judge Curtin's Order of 12-5-72.

Jan 5-73 Filed Letter dtd. 12-28-72 from Legal Aid Bureau in response to Order of 12-5-72 & Affidavit of Deft.

Jan 15-73 Filed Affidavit of Ira Bezoza on behalf of Doris Brown & Frances Glenn.

Complaint.

IN THE UNITED STATES DISTRICT COURT

For the Western District of New York

—o—

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

against

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants.

—o—

I.

NATURE OF CLAIM

1. Plaintiffs, individually and on behalf of all other persons similarly situated, seek to have this Court enjoin the enforcement of §§ 131 (4) and 164, as amended, and § 350-k of the New York Social Service Law and New York State Department of Social Services Administrative Letters No. 71 PWD-34 and 71 PWD-43 (together the law and regulations are designated the "New York Work Rules" herein). The New York Work Rules condition eligibility of "employable persons" for receipt of public assistance benefits under the federally assisted Aid to Families with Dependent Children

program ("AFDC"; New York terms this program "ADC") and Aid to Families with Dependent Children—Unemployed Parent program ("AFDC-U"; New York terms this program "ADC-U), and under the state's Home Relief program. Receipt of benefits is conditioned upon such recipients reporting semi-monthly to an office of the New York State Employment Service for "manpower services" and to pick up their checks. These Work Rules establish a presumption that recipients of such benefits are "employable." The New York Work Rules are challenged on the grounds that they are in conflict with Article VI, Clause 2 of the Constitution of the United States (the "Supremacy Clause"), with the Thirteenth and Fourteenth Amendments to the Constitution of the United States, and with the Social Security Act (42 U. S. C. §§ 601 *et seq.*) and the regulations promulgated thereunder. Plaintiffs seek an injunction against the enforcement of the New York Work Rules and a declaratory judgment that they are invalid as being in conflict with controlling constitutional, statutory and regulatory provisions.

II.

JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U. S. C. §§ 1343 (3) and (4), which provide for original jurisdiction in this Court of all suits authorized by 42 U. S. C. § 1983; and by 28 U. S. C. §§ 2201 and 2202, providing for jurisdiction in this Court of actions for declaratory judgments.

3. Plaintiffs' action for declaratory and injunctive relief and for damages is authorized by:

(a) 28 U. S. C. §§ 2291, 2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments;

(b) 42 U. S. C. § 1983, which provides redress for the deprivation under color of law of rights, privileges and immunities secured to persons within the jurisdiction of the United States by the Constitution and laws of the United States.

III.

PLAINTIFFS

4. Plaintiff Dolores Dublino is a citizen of the United States of the State of New York, residing in Erie County at 50 15th Street, Buffalo, New York. She is the mother of three minor children, ages 18, 14 and 13. Mrs. Dublino and her family received public assistance under ADC, and Mrs. Dublino is enrolled in the federal Work Incentive Program ("WIN"), a program of compulsory employment for AFDC and AFDC-U recipients established by federal law (42 U. S. C. §§ 101 (a) (15), (19) and 632 *et seq.*).

5. Plaintiff Doris Jimerson is an American Indian citizen of the United States and of the State of New York, residing in Erie County on the Cattaraugus Indian Reservation; her address is P. O. Box 53, Lantons, New York 14091. She is the mother of three children, ages 16, 14 and 11. Mrs. Jimerson and her family receive public assistance under the ADC program.

6. Plaintiff Virginia Michael is a citizen of the United States and of the State of New York, residing in Erie County at 3056 Wende Road, Alden, New York. She is the mother of three children, ages 19, 18 and 16. Mrs. Michael and her children receive public assistance under the ADC program. Mrs. Michael's husband, age 69, receives public assistance under the Aid to the Aged program, 42 U. S. C. §§ 401 *et seq.*

7. Plaintiff Janie Lee Phillips is a citizen of the United States and of the State of New York, residing in Erie County at 823 Virginia Street, Buffalo, New York. She receives public assistance under the state's Home Relief program.

8. Plaintiff Maria Marfoglia is a citizen of the United States and of the State of New York, residing in Erie County at 418 Busti Street, Buffalo, New York. Mrs. Marfoglia is the mother of six children, ages 16, 13, 12, 10, 8 and 4. She and her family receive public assistance under ADC.

IV.

CLASS

9. Plaintiffs bring this action on their own behalf, on behalf of their minor children on behalf of all others similarly situated, pursuant to Rules 23 (a) and 23 (b) (2) of the Federal Rules of Civil Procedure. The class which Plaintiffs represent are all persons similarly situated who are recipients of public assistance under the federally assisted ADC and ADC-U programs, and under the New York Home Relief program who have been or may be classified as "employable" under § 131 (4) of the New York Social Service Law, as amended, and the regulations issued pursuant thereto, or whose parents, guardians or caretakers have been so classified and are or will be required to travel to an office of the New York State Employment Service semi-monthly for "manpower services," and to pick up their assistance checks, and may be required to accept any proferred employment, including work on public works projects, mandated by N. Y. Soc. Serv. L. § 164, as amended, and § 350-k. The members of the class on behalf of whom Plaintiffs sue are so numerous as to make joinder impracticable. There are questions of law and fact common to all members of the

class. Plaintiffs challenge the validity of statutes and regulations which are applicable uniformly to all members of the class. The statutes are challenged on the grounds that they conflict with the Supremacy Clause of Article VI, Clause 2, the Thirteenth Amendment, and the Due Process and Equal Protection Clause of the Fourteenth Amendment to the constitution of the United States, and the Social Security Act, grounds applicable to all members of the class. Defendants have acted or refused to act on grounds generally applicable to the class. The claims of the Plaintiffs are typical of the claims of the members of the class. The Plaintiffs will fairly and adequately protect the interests of the members of the class.

V.

DEFENDANTS

10. Defendant New York State Department of Social Services (the "Department of Social Services") is the agency responsible for the administration of ADC and ADC-U in the State of New York and is responsible in part for the administration of the New York Work Rules.

11. Defendant George K. Wyman is Commissioner of the New York State Department of Social Services and is responsible for the administration and enforcement of public assistance programs in the State of New York.

12. Defendant New York State Department of Industrial Relations (the "Department of Industrial Relations"), is the agency of which the New York State Employment Service ("SES") is a subdivision. The New York State Employment Service is the agency charged with enforcing portions of the New York Work Rules.

13. Defendant Louis L. Levine is a Commissioner of the New York State Department of Industrial Relations and is

responsible for the administration of the program of that agency.

14. Defendant Erie County Department of Social Services (the "County Department") is the agency responsible for the administration of Home Relief, ADC and ADC-U in Erie County, New York and is responsible in part for the administration of the New York Work Rules.

15. Defendant George G. Sipprel is the Commissioner of the Defendant Erie County Department of Social Services.

16. N. Y. Soc. Serv. L. § 131 (4) provides that no public assistance be given to any "employable person" who has "not registered with the nearest local employment agency of the Department of Labor or has refused to accept employment in which he is able to engage." In 1971 this section was amended (effective July 1, 1971) to redefine "employable persons" and to change the procedure for receipt of benefits:

> "For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available.

notwithstanding diligent efforts by such person to obtain others to provide such care. A person assigned to an participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

"Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department."

17. Under § 131 (4), a person is deemed to have refused employment if he:

"a. fails to obtain and file with the social services district at least once in every two-week period a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the application is able to engage, or

"b. wilfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

"c. wilfully fails to report to such office the result of a referral to employment, or

"d. wilfully fails to report for employment. Such wilful failures or refusal as above listed shall be

reported immediately to the social services district by such employment office."

18. To implement these provisions, the Department of Social Services and the County Department have promulgated regulations requiring Plaintiffs and the members of their class to pick up their assistance checks semi-monthly at the main SES office in Erie County.

19. Prior to the effective date of the new Work Rules, Recipients of ADC and ADC-U and of Home Relief have received their public assistance checks by mail, either monthly or semi-monthly; recipients not deemed "employable" will continue to so receive their checks.

20. Defendants and the New York Legislature have defined the minimally adequate monthly subsistence standard for the basic needs, such as food, clothing and transportation, for families receiving Home Relief, ADC and ADC-U as follows (N. Y. Soc. Serv. L. § 131-a):

Number of Persons in Household

1	2	3	4	5	6	each additional
					329	
$84	$134	$179	$231	$284	$326	$45

Under recent amendments to § 131-a, maximum payments to such families have been set at 90% of these minimum amounts. N. Y. Soc. Serv. L. § 131-a (3) (b). The monthly amount allotted in these maximum payments for transportation expenses as approximately $1.50 per person. Other than transportation for medical assistance, reimbursed in the state's medicaid program, no provision is made under state

law for additional transportation allowances for Home Relief, ADC or ADC-U applicants or recipients.

21. New York, in order to receive funds for the AFDC and AFDC-U programs, is required by the Social Security Act, 42 U. S. C. §§ 601 *et seq.* to have formulated a "State Plan" for said program in conformity with the provisions of the Social Security Act and is further required to establish a single State agency to administer such Plan.

22. Congress, in the 1967 Amendments to the Social Security Act, established the Work Incentive Program ("WIN") for appropriate recipients of AFDC and AFDC-U. See 42 U.S.C. §§ 602(a)(15), (19) and 632 *et seq.* WIN must provide *inter alia:* for exemption of certain people from a determination that they are appropriate to be referred to work or training (42 U. S. C. § 602 (19) (A)); for child care services (42 U. S. C. § 602 (15) (A) (i)); for testing and counseling (42 U. S. C. § 633 (a)); for the development of an "employability plan" leading to self-support (42 U. S. C. § 633 (b)); for the applicable minimum wage for the particular work concerned (42 U. S. C. § 633 (e) (4)); for reasonable work conditions (42 U. S. C. §§ 633 (f) (i) and (3)); for workmen's compensation (42 U. S. C. § 633 (f) (4)); and for the continuation of the Aid to Dependent Children grant to other members of the assistance unit after a "non-good cause" refusal to accept employment (42 U. S. C. § 602 (19) (F)).

23. In 1971, the Legislature amended Soc. Serv. L. § 164 and added new § 350-k to require each locality to establish public works programs. Home Relief recipients are referred to programs under § 164, and ADC and ADC-U recipients are referred under § 350-k. Recipients can be required to work in these programs, and their compensation is the public

assistance benefit to which they are normally entitled. Although these sections differ in some respects, neither provision sets standards for the type of work to be provided in these programs, nor for the wages to be paid to recipients.

24. Plaintiff Dolores Dublino has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4), has reported to the County Department to obtain an identification card, and has been scheduled for an appointment on July 6, 1971 to pick up her check at the main SES office in Buffalo, an agency of the Defendant Department of Industrial Relations, which office is approximately three miles from her home. Plaintiff Dublino is presently enrolled in the federal WIN program and is scheduled to register on July 6, 1971, the same day as her appointment at SES, for a modern office training class at Bryant and Stratton Business Institute, 1028 Main Street, Buffalo, New York.

25. Plaintiff Dublino was referred to this WIN training program by WIN personnel in the employ of the Defendant Department of Industrial Relations. Mrs. Dublino justifiably fears that conflicting appointments may prevent her registration in desired courses of the training program and that her semi-monthly appointment to pick up her check will interfere with other training. The distance between Bryant and Stratton Business Institute and the SES office is approximately six miles. The trip between these two points will involve at least one bus transfer and will take at least 30 minutes travel time on each direction.

26. Plaintiff Doris Jimerson has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4), has received her identification card, and has been scheduled for an appointment on July 14, 1971, between 10:15 and 10:45 A. M. to pick up her check at the Buffalo SES office.

Mrs. Jimerson lives on a dirt road 6/10 of a mile from the nearest paved highway, and 4 miles from the nearest bus stop, at Gowanda, New York. Her home is 32 miles from Buffalo. Mrs. Jimerson has called a taxi company to inquire about transportation to Gowanda, and has been told that the taxi will cost $6.00 each way. Bus fare to Buffalo is $1.15 one way.

Mrs. Jimerson is not yet sure there is a bus which would get her to Buffalo on time for her appointment, and it may be necessary to leave the night before. In any case, the trip will take the better part of a day.

27. Mrs. Jimerson has been informed by her caseworker that her oldest child, Michele, 16, who is a high school student, will be classified as "employable" for the summer and thereby will also be required to report to Buffalo twice monthly for "manpower services."

28. Although Mrs. Jimerson has been informed that she will receive a "special check" on July 1 to tide her and her family over until she receives her regular check at the SES office on July 14, this "special check" will not include an allotment for rent. Mrs. Jimerson's rent is due on July 1 and she is afraid that her landlord will take action against her for failure to pay her rent when due.

29. Plaintiff Virginia Michael has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4), has reported to the County Department in Buffalo to obtain an identification card, and has been scheduled for an appointment on July 14, 1971, to pick up her check at the Buffalo SES office. Buffalo is 22 miles from Mrs. Michael's home; she will have to take an 8:20 A. M. bus to Buffalo, and will have to wait until 2:30 P. M. for the return bus to her home in Alden, New York, arriving at 3:40 P. M. Round

trip bus fair from Alden is $1.40 and, because of the schedule, Mrs. Michael will have to purchase lunch in Buffalo. The "flat grant" for Mrs. Michael under ADC is approximately $1.65 per day.

30. Mrs. Michael has been informed by her caseworker that her two oldest children, ages 19 and 18, both high school graduates, will also be required to report to the Buffalo office of SES twice monthly, necessitating a further high expenditure of their benefits.

31. Although Mrs. Michael has been informed that she will receive a "special check" on July 1 to tide her and her family over until she receives her regular check at the SES office on July 14, this "special check" will not include an allotment for rent. Mrs. Michael's rent is due on July 1, and she is afraid that her landlord will take action against her for failure to pay her rent when due.

32. Plaintiff Janie Lee Phillips lost her leg in 1965, in a farm accident. She is fitted with an artificial limb, but because of its heaviness she has great difficulty in walking more than 100 yards. Plaintiff Phillips has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4) and has reported to the County Department to obtain an identification card. Because of her handicap, Plaintiff Phillips had to take a taxi to the County Department. She will also have to take a taxi to the SES office, where she is required to report on July 12.

33. Plaintiff Phillips pays rent for each month on the 16th of the month. Although she will receive her check, including one half of her rent allotment, on the 12th of July, she will not receive her second rent allotment until July 27, her next appointment at SES. Plaintiff Phillips receives $72

in public assistance every two weeks; her rent is $50.00 per month. Mrs. Phillips is afraid that she will be unable to pay her rent when due and that her landlord will take action against her.

34. Plaintiff Maria Marfoglia has been notified that she is an "employable person" under N. Y. Soc. Serv. L. § 131 (4) and has reported to the County Department to obtain an identification card. At the time she was required to so report, Mrs. Marfoglia had no money for bus fare or for babysitters, and so she and her six children walked three miles to the offices of the County Department. Mrs. Marfoglia is concerned about the requirement that she travel to the SES office every two weeks and also about the possibility that she may be required to accept employment. Mrs. Marfoglia feels that adequate child care is not available for her children. Her sister cannot care for Mrs. Marfoglia's children, being busied with her own five children, and Mrs. Marfoglia's mother, age 67, is ill. Mrs. Marfoglia, who is divorced, does not want to leave her children in the care of a stranger, as she feels this will have a detrimental effect on their upbringing. Mrs. Marfoglia has been scheduled for an appointment on July 2, 1971 to pick up her check at the SES office in Buffalo, some two miles from her home.

35. None of the above Plaintiffs received any notice prior to their receipt of the letter informing them that they had been deemed "employable." No discussion had been had with any caseworker or other official as to any Plaintiff's availability for work or as to any problems which might arrise as a result of the obligations incurred by them because of their being found "employable." Each of the Plaintiffs is under immediate threat of referral to a work project by reason of the determination that she is "employable".

AS AND FOR A FIRST CAUSE OF ACTION

36. The New York Work Rules violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States in that they arbitrarily and discriminatorily establish onerous requirements and sanctions as to Plaintiffs and the class they represent different from those applicable to those recipients not found "employable." These Work Rules work an undue hardship on Plaintiffs and their class, subjecting them to possible eviction from their homes and requiring them to expend significant amounts of their vitally needed public assistance grants for travel and other arrangements necessary to comply with the requirements of the Rules. These requirements, applied only to those recipients deemed "employable," are an unreasonable discrimination of violation of the Equal Protection Clause.

AS AND FOR A SECOND CAUSE OF ACTION

37. The New York Work Rules violate the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, in that they are so vague, due to their absence of standards, as to promote arbitrary administration and further, are too vague to adequately appraise Plaintiffs and the members of their class of what is expected of them, and fair to provide adequate procedural safeguards to protect the rights of the Plaintiffs and the members of their class.

AS AND FOR A THIRD CAUSE OF ACTION

38. The New York Work Rules violate the Thirteenth Amendment to the Constitution of the United States, in that they are so vague and lacking in standards as to establish a system of involuntary servitude within the meaning of said Amendment.

AS AND FOR A FOURTH CAUSE OF ACTION

39. The New York Work Rules are invalid insofar as they establish a work program for recipients of ADC and ADC-U in direct conflict with the Work Incentive Program, as established by the Social Security Act, and, consequently, are invalid because they invade an area preempted by federal statute in violation of the Supremacy Clause of the Constitution of the United States, Article VI, Clause 2.

AS AND FOR A FIFTH CAUSE OF ACTION

40. The New York Work Rules are invalid insofar as they condition receipt of ADC and ADC-U benefits by otherwise eligible persons on the fulfillment of conditions not present in the Social Security Act. These work rules set up an additional condition of eligibility inconsistent with 42 U. S. C. § 602 (a) (10), which provides that "a state plan for aid and services to needy families must . . . provide that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals."

AS AND FOR A SIXTH CAUSE OF ACTION

41. The New York Work Rules are invalid because they are inconsistent with the requirements of 42 U. S. C. § 602 (a) (3) that the State establish a single state agency to administer the Plan required under the Act.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully pray that this Court:

1. Assume jurisdiction of this cause and set this cause down for hearing.

2. Enter a declaratory judgment pursuant to 28 U. S. C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring that the New York Work Rules

a. Violate and are repugnant to the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

b. Violate and are repugnant to the Thirteenth Amendment to the Constitution of the United States.

c. Are inconsistent with and have been preempted by the Social Security Act, 42 U. S. C. §§ 601 *et seq.*

3. Issue a temporary restraining order

a. Restraining the Defendants from requiring Plaintiffs and the members of their class to pick up their public assistance checks at an office of the State Employment Service and from taking further steps to enforce the New York Work Rules.

b. Ordering the Defendants to issue immediately by mail the amounts normally due to Plaintiffs and the members of their class as their semi-monthly public assistance grant, including rent allowance, less any amount already issued in the form of "special check."

4. Enter a preliminary injunction pending the final determination of this matter and, thereafter, a permanent injunction prohibiting, restraining and enjoining Defendants, their successors in office, agents and employees from en-

forcing, applying or implementing the aforesaid New York Work Rules.

5. Award Plaintiffs damages, and their costs herein, and any additional or alternative relief as the Court may deem to be just and appropriate.

Respectfully submitted,

LEGAL AID BUREAU OF
BUFFALO, INC.,
NEIGHBORHOOD LEGAL SERVICES,
481 Swan Street,
Buffalo, New York 14204,
Michael A. O'Connor,
Of Counsel,

Dennis R. Yeager,
E. Richard Larson,
Mayer G. Freed,
401 West 117th Street,
New York, New York 10027,
Attorneys for Plaintiffs.

Decision Granting Motion for Class Action and Ordering Convening of a Three-Judge Court.

UNITED STATES DISTRICT COURT

Western District of New York

—o—

DELORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants.

Civil No. 1971-306.

—o—

Appearances:

Michael A. O'Connor, Buffalo, New York, and Dennis R. Yeager, E. Richard Larson, and Mayer G. Freed, New York, New York, for Plaintiffs.

Louis J. Lefkowitz, Attorney General of the State of New York (Jean M. Coon, Assistant Attorney General, of Counsel), for defendants Wyman and Levine.

Mario C. Gambacorta, Assistant County Attorney, County of Erie, for defendant Sipprell.

Decision Granting Motion for Class Action and Ordering Convening of a Three-Judge Court.

This is an action challenging the constitutionality of the recent amendments to the New York Social Welfare Law, and the departmental regulations adopted pursuant to the amendments, all commonly known as the New York Work Rules. The contested provisions are Sections 131(4) and 164, as amended,[1] and 350-k[2] of the Social Welfare Law and Department of Social Services Administrative Letters, Numbers 71 PWD—34[3] and 71 PWD—43[4]. In brief, the Work Rules establish a presumption that certain recipients of public assistance under some state welfare programs are employable and require such recipients to report semi-monthly to the New York State Employment Service to pick up their assistance checks and accept referral to employment positions, including employment on public works projects.

The plaintiffs have each been notified that they have been determined to be employable and have been directed to report to the State Employment Service. They sue on behalf of themselves and their minor children, and seek to proceed, pursuant to Rule 23(b) (2) of the Federal Rules of Civil Procedure, as representatives of a class composed of all persons receiving New York public assistance grants who have

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1 Subdivision four of Section 131 was amended by Chapter 102, Laws of New York, 1971.

Section 164 was amended by Chapter 101, Laws of New York, 1971.

2 Section 350—k was added as a new section by Chapter 101, Laws of New York, 1971.

3 Administrative Letter No. 71 PWD—34 provides as follows:

Omitted in printing—printed as Exhibit B to answer of State Defendants.

4 Administrative Letter No. 71 PWD—43 provides as follows:

Omitted in printing—printed as Exhibit C to answer of State Defendants.

been or are subject to the operation of the above statutes and regulations.

The relief sought is a judgment declaring the statutes and regulations unconstitutional under the Thirteenth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and invalid under the Supremacy Clause of the Constitution of the United States, on the ground that they conflict with the provisions of the Social Security Act of 1935 (42 U. S. C. §§ 601 *et seq.*). Plaintiffs further seek a temporary order restraining the enforcement of the Work Rules pending the final determination of this matter, and a permanent injunction thereafter.

The defendants have moved to dismiss the complaint on the grounds that it has failed to state a cause of action and that the federal court should exercise its discretion to abstain from deciding the constitutional issues presented here while the plaintiffs exhaust their state administrative remedies pursuant to Section 353, New York Social Welfare Law. At this time, the defendants' motion must be denied. See *Woolfolk v. Brown*, 325 F. Supp. 1162 (E. D. Va. 1971). With respect to the question of federal abstention, as will be apparent from the discussion below, the defendants' motion is premature.

Three questions remain: whether the plaintiffs should be permitted to proceed as a class, whether a three-judge panel, pursuant to Title 28, United States Code, Sections 2281 and 2284, should be certified, and whether a preliminary injunction should issue.

A class action under Rule 23(b) (2) is proper if the prerequisites of Rule 23(a) are satisfied and

> the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. (Rule 23(b)(2).)

The class plaintiffs seek to represent is numerous, with joinder impracticable, and there are common questions of law. The claims presented are typical, and will be fairly represented by the named plaintiffs. The court finds that this is an appropriate class action, and plaintiffs are accordingly permitted to proceed as representatives.

In this circuit, notice to absentee members of the class is required. *Eisen v. Carlisle & Jacquelin*, 391 F. 2d 555 (2d Cir. 1968). They should be advised of the pendency of the suit and of their right to be excluded from the final judgment. Given the indigency of the plaintiffs and class, the defendants should provide the notice of this action. Individual notification is unnecessary. "In the degree that there is cohesiveness or unity in the class and the representation is effective, the need for notice to the class will tend toward a minimum." Advisory Committee Notes, Proposed Rules of Civil Procedure, 39 F. R. D. 69, at 106 (1966). Defendants are directed to post notices, in appropriate form,[5] at a con-

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5 A suggested form would be as follows:

NOTICE

The New York Work Rules (Sections 131(4), 164, and 350—k of the New York Social Welfare Law) are currently the subject of constitutional litigation in the United States District Court, Buffalo, New York, 14202. All public assistance recipients subject to these statutes are now deemed to be plaintiffs in this lawsuit.

(Footnote continued on following page)

spicuous location in each of the offices of the Department of Social Services and State Employment Service which are regularly visited by members of the class. The notice should further indicate that persons wishing to be excluded from the effect of a final determination in this matter should notify this court no later than September 1, 1971. In further consideration of the members of the class, the notices should be written in English and Spanish.

Where state legislation is sought to be enjoined as violative of the Constitution of the United States, a three-judge panel is usually required before a decision on the merits can be reached. The district judge must determine whether the constitutional questions presented are substantial, whether the complaint alleges a basis for equitable relief, and whether the case otherwise comes within the requirements of Title 28, United States Code, Sections 2281 and 2284. See *Idlewild Bon Voyage Liquor Corp. v. Einstein*, 370 U. S. 713 (1962). The court finds that this action meets the *Idlewild* test, and therefore the Honorable Chief Judge of the United States Court of Appeals for the Second Circuit is hereby requested to convene a three-judge court to hear and determine this cause.

(Footnote continued from preceding page)

Counsel for the individual named plaintiffs who are representing the class are: Michael O'Connor, Esq., 481 Swan Street, Buffalo, New York 14202, and Dennis Yeager, Esq., E. Richard Larson, Esq. and Mayer G. Freed, Esq., 401 West 117th Street, New York, New York 10027.

Any member of the class who wishes to be excluded from the effect of a final determination in this matter should express his choice *in writing* on or before September 1, 1971. Such letters should be addressed to: Clerk, United States District Court, 68 Court Street, Buffalo, New York 14202.

Dated:.....

Finally, plaintiffs seek a temporary order restraining the enforcement of the challenged state provisions with respect to each member of the class. Title 28, United States Code, Section 2284(3). This motion is denied. There is not sufficient evidence, by way of affidavit or otherwise, before the court to demonstrate irreparable injury to all members of the class.

So ordered.

JOHN T. CURTIN,
United States District Judge.

Dated: August 6, 1971.

Answer on Behalf of State Defendants.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

The defendants New York State Department of Social Services, George K. Wyman, New York State Department of Labor, and Louis L. Levine, by their attorney, Louis J. Lefkowitz, Attorney General of the State of New York, for their answer to the complaint herein:

1. Admit the allegations contained in paragraphs 11, 14, 15, 16, 17, 19, 21, and 22 of the complaint herein.

2. On information and belief, admit the allegations contained in paragraphs 4, 5, 6, 7, 8, 24, 27, 29, 30, and 32 of the complaint herein. The source of their information and the grounds for their belief are affidavits of the plaintiffs sub-

mitted to the Court in support of an application for a Temporary Restraining Order.

3. Deny each and every allegation contained in paragraphs 36, 37, 38, 39, 40, and 41 of the complaint herein.

4. As to the allegations contained in paragraph 1 of the complaint herein, admit those allegations are the stated purpose of the action and state the claims of the plaintiffs, but deny any conclusions as to the validity of the claims contained therein which may be drawn from those allegations.

5. As to the allegations contained in paragraphs 2 and 3 of the complaint herein, admit that the jurisdiction of the Court is invoked in this action as stated, but deny any conclusions as to the validity of the claims therein stated which may be drawn from those allegations.

6. As to the allegations contained in paragraph 9 of the complaint herein, admit that the action is brought as stated, but deny any conclusions as to the validity of the claims therein stated which may be drawn from the allegations contained therein and further deny that plaintiffs may properly bring this action as a class action on the ground that questions of law and fact affecting only the individual plaintiffs predominate over questions of law or fact common to the whole class as stated.

7. As to the allegations contained in paragraph 10 of the complaint herein, admit the allegations thereof except allege that the New York State Department of Social Services is the sole final authority for the administration of the New York Work Rules.

8. As to the allegations contained in paragraph 12 of the complaint herein admit the allegations thereof, except allege that the correct title of the Department is the New York

State Department of Labor and that the New York State Employment Service is the agency charged with implementing a portion of the Work Rules, but is not a final enforcing or administering authority.

9. As to the allegations contained in paragraph 13 of the complaint herein, admit the allegations thereof, except allege that defendant Louis L. Levine is the Industrial Commissioner of the State of New York and is the chief executive officer of the New York State Department of Labor.

10. As to the allegations of paragraph 18 of the complaint herein, admit the allegations thereof, except that the State Department of Social Services regulations are general statewide regulations and do not refer specifically to the individual plaintiffs herein or apply solely to Erie County.

11. As to the allegations contained in paragraph 20 of the complaint herein, admit the allegations thereof, except allege that the flat grant provided under Social Services Law, § 131—a does not include housing, fuel, medical expenses or other specific types of expenses as provided in the regulations of the Department (18 NYCRR § 352.1), and further allege that the standard of need for a family of 6 is $329 per month (not $326), and further allege that transportaion allowances have been provided by regulation for persons engaged in Public Works projects under the New York Work Rules and can be provided by Department regulation in other instances where need is shown, and further allege that the computation of basic needs does not include specific amounts for items such as transportation, but is computed from Federal figures establishing low income levels converted to New York State costs which figures include an annual allowance for transportation amounting to approximately $80 for a family of four.

12. As to the allegations contained in paragraph 23 of the complaint herein, admit the allegations thereof, except allege that the provisions of Section 350—k are not being applied to ADC and ADC—U recipients and that only Home Relief recipients are being referred to public works projects, and further deny that the statutes do not set standards for type of work provided or wages to be paid to recipients.

13. As to the allegations contained in paragraph 25 of the complaint herein, admit the allegations thereof, except allege that the correct title of the Department is the Department of Labor, and deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

14. As to the allegations contained in paragraph 26 of the complaint herein, admit the allegations thereof on information and belief, except deny that plaintiff's appointment could not be scheduled so that she could make the trip to Buffalo in one day.

15. As to the allegations contained in paragraph 28 of the complaint admit the allegations thereof, on information and belief, except deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

16. As to the allegations contained in paragraph 31 of the complaint herein, admit the allegations thereof, on information and belief, except deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

17. As to the allegations contained in paragraph 33 of the complaint herein, admit the allegations thereof, on information and belief, except deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

18. As to the allegations contained in paragraph 34 of the complaint herein, admit the allegations thereof on information and belief, except deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

19. As to the allegations contained in paragraph 35 of the complaint herein, deny knowledge or information sufficient to form a belief as to the allegations contained therein, except deny that ADC or ADC—U recipients may be referred to public works projects under the Departmental regulations.

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

20. Prior to the enactment of Chapter 102 of the Laws of 1971, a copy of which is attached hereto as Exhibit A, Social Services Law, § 131 required "employable" recipients of public assistance to report semi-monthly to the nearest office of the State Employment Service for job referral. That section also contained an exemption from the definition of employable of persons unable to work by reason of age, health, or other disability. Chapter 102 amended that Section in two respects. First, it clearly defined the persons who would be deemed not to be employable, as those persons rendered unable to work by reason of illness, significant and substantial physical or mental incapacity, advanced age, full-time attendance at school in the case of a minor, full-time satisfactory participation in an approved program of vocational training or rehabilitation, or the need of such person to provide full-time care for other members of the household for whom care is otherwise not reasonably available. Thus, for the first time, the statute actually con-

tained a definition and standard for determining which public assistance recipients were or were not employable. Contrary to the allegations of the plaintiffs, Chapter 102 established the first statutory standards for that determination and established standards which are on their face reasonable and fair.

21. Secondly, Chapter 102 provided that "employable" public assistance recipients would, at the time of their reporting for job referral or employment counseling, have their assistance checks personally delivered to them. Not only would that system provide an accurate method of determining whether or not employable recipients were in fact reporting for job referral or counseling, but also would assure those recipients of the receipt of their checks on a day certain, without having to rely on the uncertainty of mail deliveries, but would also tend to alleviate some of the problem of check thefts. Recipients considered non-employable by reason of participation in a program of vocational training or rehabilitation are also required to report to the offices of the State Employment Service for job counseling and for evaluation of their progress in the training or rehabilitation programs. At the time of such reporting they are also to have their assistance checks delivered to them. Chapter 102 has been implemented by Administrative Letters Nos. 71 PWD-34, 71 PWD—43 and 71 PWD—52, copies of which are attached hereto as Exhibits B, C, and D. These letters establish reasonable, fair and adequate standards for the determination of employability and the procedures for referral of employables for job referral and services.

22. Chapter 101 of the Laws of 1971 (a copy of which is attached hereto as Exhibit E) amended Social Services Law

§ 164 to require each social services district to provide for the establishment of Public Works Projects for the assignment of employable persons receiving Home Relief. Such programs would be established either directly by the social services district or, by contract, by the State Industrial Commissioner. Public Works Projects established under the law must meet State and Federal requirements and are to be provided for the conservation of work skills and/or the development of new skills of recipients of aid. Persons assigned to such projects must be employable under the terms of Social Services Law, § 131, as amended, and provision must also be made to permit such persons to seek regular employment or to secure appropriate training or retraining where available. Chapter 101 has been implemented by Administrative Letter 71 PWD—48, a copy of which is attached hereto as Exhibit F.

23. Both Chapters 101 and 102 have been implemented by Departmental regulations filed with the Secretary of State of the State of New York on July 30, 1971, a copy of which is attached hereto as Exhibit G. The Administrative Letters and Departmental regulations provide definite, reasonable, adequate and fair standards for administration of the programs and accord to the plaintiffs and other recipients of assistance subject to those regulations due process of law.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

24. This Court should abstain from a determination of the issues raised in the complaint until plaintiffs have pursued administrative remedies available to them under State law. The complaint and the affidavits in support of the motion for a Temporary Restraining Order raise issues as to

whether or not plaintiffs have been properly classified as employable and as to whether or not alleged hardships cannot be alleviated by rescheduling of appointments or by other administrative determinations. If plaintiffs' individual situations may be so resolved then the constitutional issues need not be reached for a determination of the merits of plaintiffs' complaints.

WHEREFORE, defendants respectfully request that this Court enter a judgment dismissing the complaint herein and declaring Chapters 101 and 102 of the New York Laws of 1971 to be constitutional and valid.

Dated: August 13, 1971.

LOUIS J. LEFKOWITZ,
Attorney General of the
State of New York,
Attorney for State Defendants,
The Capitol,
Albany, New York 12224,
(518) 474-7173,
By Jean M. Coon,
Assistant Attorney General.

Exhibit A Attached to Answer.

Exhibit A.

STATE OF NEW YORK

(Imprint)

6395

1971-1972 Regular Sessions

IN SENATE

April 6, 1971

Ch. 102

Introduced by COMMITTEE ON RULES—read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT

To amend the social services law, in relation to employable recipients of public assistance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision four of section one hundred thirty-one of the social services law, as amended by chapter one hundred eighty-four of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

4. No assistance or care shall be given to an employable person who has not registered with the nearest local em-

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

ployment agency of the department of labor or has refused to accept employment in which he is able to engage.

A person shall be deemed to have refused to accept such employment if he:

a. fails to obtain and file with the social services district at least once in every two-week period a new certificate from the appropriate local employment period a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

b. wilfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

c. wilfully fails to report to such office the result of a referral to employment, or

d. wilfully fails to report for employment. Such wilful failures or refusal as above listed shall be reported immediately to the social services district by such employment office.

[This shall not apply to persons who cannot register with such employment agency because of age, health or other disability.]

For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced

age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department.

§ 2. This act shall take effect July first, nineteen hundred seventy-one.

Exhibit B Attached to Answer.

Exhibit B.

STATE OF NEW YORK

Department of Social Services
1450 Western Avenue
Albany, New York 12203

George K. Wyman
Commissioner

Transmittal No.: 71 PWD—34
Date: May 13, 1971

ADMINISTRATIVE LETTER

To: Commissioners of Social Services.

Subject: Employable Recipients of Public Assistance.

Distribution: B—5 Public Assistance Executive and Supervisory Staff.

Chapter 102 of the Laws of 1971, effective July 1, 1971, amends Section 131.4 of the Social Services Law. The amendments contain three significant additions:

1. The statutory definition of "employable" is as follows:

A person shall be deemed employable if such person is not rendered unable to work by:

(a) illness of significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services.

(b) advanced age.

(c) full-time attendance at school in the case of a minor, in accordance with provisions of the Law. (N. B. this is interpreted not to include emancipated minors.)

(d) full-time, satisfactory participation in an approved program of vocational training or rehabilitation.

(e) the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care.

2. A person assigned to and participating in a public works project under the provisions of sections 164 or 350—k of the Social Services Law shall be deemed to be employable but not employed.

3. Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the Division of Employment of the State Department of Labor.

The Department, in cooperation with the State Labor Department, is presently developing regulations, policies and procedures to implement this Law as of July 1, 1971. As these are developed, we will further advise you.

In order that each local social services district have as much time as possible to prepare for the orderly im-

plementation of the Law, the following steps should be initiated immediately so that they are completed by no later than June 30, 1971:

A. Each social services district shall immediately review its undercare caseload to insure that its roster of HR and ADC employables is up to date. The roster shall be kept current by additions and deletions as they occur.

B. In addition, the following type cases shall be separately identified:

1. The "employable" not deemed to be employable because of participation in an approved program of vocational training or rehabilitation; *i.e.*, WIN, MDTA, etc. (See Bulletin 26, page 7 for other examples). If the "employable", person is not the grantee, his relationship shall be specified.

2. The grantee is "employable", and there are one or more other "employables" in the family. The relationship of the other "employables" to the grantee shall be specified.

3. The grantee is not "employable", but there are "employables" in the family; *i.e.*, an instance of a disabled ADC mother with an "employable" 17 year old son; etc. The relationship of the "employable" to the grantee shall be specified.

C. In each case where there is an "employable" male head-of-family, he shall be made grantee for the family grant, if he is not presently the grantee.

D. Since the "employable's" Social Security Account number will be used as an identifier, all individuals age 14 and over are required to possess a Social Security Account number.

Exhibit C Attached to Answer.

Methods and procedures for securing a Social Security Account number for those individuals not now possessing one will be released within the next few days.

GEORGE K. WYMAN,
Commissioner.

Exhibit C.

STATE OF NEW YORK

Department of Social Services
1450 Western Avenue
Albany, New York

GEORGE K. WYMAN
Commissioner

Transmittal No.: 71 PWD—43
Date: June 9, 1971

ADMINISTRATIVE LETTER

To: Commissioners of Social Services.

Subject: Work Reform: Policy and Procedure for Referral of Unemployed Employables to the New York State Department of Labor for Check Delivery and Receipt of Employment Services.

Distribution: B—2 General Administrative Staff (Special).

As you know, the Laws of 1971 place a renewed and expanded emphasis on restoring all employable recipients of public assistance to employment in the regular economy. Accordingly, all unemployed employable persons applying for

or receiving public assistance are not only required to register at the New York State Employment Service district office in their community, and report there regularly for appropriate employment counseling services and job referral, but, effective July 1, they will also pick up their assistance checks there. The penalty for not cooperating in this procedure is ineligibility for public assistance whether the individual is the grantee head of family, single person living alone, or non-grantee non-head of family.

The Law places the full responsibility for the determination of employability and for the required action in applying sanctions for failure to cooperate in the process on the local social service agencies. It is the intent of the Legislature that the services required to implement the various provisions of the Law be a top priority activity in social service agencies and that the necessary monitoring of the program to provide the report data necessary for evaluation be an inherent part of the entire process.

To assist you in implementing and evaluating the legal requirements, this Department has had a series of discussions and clearances with the New York State Department of Labor and the Social Security Administration. We have reached agreement regarding the basic components and a standardized procedure which will assure uniform, effective processing and reporting operations state-wide. Obviously, it will be necessary for you to establish close working relationships with the local offices of these agencies to assure that everything possible is done to achieve an orderly work flow so that the objective of the law to restore employable recipients to employment may be accomplished without confusion, or harassment to the recipients. Because of the wide variations in workloads throughout the State, some minor adjustments in the procedures outlined may be necessary at

the local level. It is important that these do not interfere in any way with the required referral process or reporting requirements.

I also believe that there is need for planned local publicity around these new requirements of the Law and the procedures for implementing them. I urge you to utilize all available community resources to help you to promote a full understanding of this important legislation.

This Department is planning a series of special meetings around the State with you and representatives of your staff to explain and clarify the policy and procedural material reflected in this Administrative Letter. If you have any questions we will be happy to help you resolve them. Representatives from the Department of Labor will also be participating with staff of this Department in these meetings. I am certain that you will give this matter your immediate attention so that this intensified effort toward employment can be operative by July 1.

GEORGE K. WYMAN,
Commissioner.

POLICIES AND PROCEDURES FOR REFERRAL OF UNEMPLOYED EMPLOYABLES TO THE NEW YORK STATE DEPARTMENT OF LABOR.

I. A. Introduction.

1. Legal Basis.

Administrative Letter 71 PWD—34 provided preliminary information concerning amendments to

Section 131.4 of the Social Services Law. Subsequently, Chapter 298 of the Laws of 1971 amended the same section of the Social Services Law to provide that:

(a) Recipients are required to report *semi-monthly* to the Employment Service.

(b) The Social Services Department, as well as the recipient, is charged with the responsibility to exercise diligent effort to secure child care for potentially employable recipients.

2. Purpose.

The purpose of Section 131.4 is to restore *all* employable recipients of public assistance to employment in the regular economy. To accomplish this, the Law specifies certain responsibilities to be met by all social services districts and recipients, as follows:

(a) Social services districts are required to assess the employability of all applicants and recipients between the ages of 16 through 64 and to determine, in accordance with specific criteria (See Section B), those recipients who are employable and unemployed.

(b) The State Employment Service is responsible for the provision of manpower services and job placement for all recipients who are deemed employable.

(c) All unemployed employable grantees shall report to the New York State Employment Service on a semi-monthly basis for manpower services, certification, and receipt of their regular semi-monthly grant.

(d) All unemployed employable non-grantees are required to report to the State Employment Service on a semi-monthly basis for manpower services and certification.

(e) All unemployable persons in vocational training or rehabilitation are required to report to the State Employment Service on a semi-monthly basis for a review of their progress in training, necessary manpower services, and receipt of their regular semi-monthly grant of assistance, if they are the grantee.

B. Department Policy.

1. Definition of Employable.

All ADC or HR applicants or recipients age 16 and over shall be deemed employable except by reason of:

(a) Full-time employment;

(b) Attendance at school full-time for a minor other than an emancipated minor;

(c) Attendance full-time in grade or high school for an emancipated minor;

(d) Full-time, satisfactory participation in an approved program of vocational training or rehabilitation, which shall include but not be limited to participation in the Work Incentive Program and a two-year college program with a specific vocational objective;

(e) Part-time employment to the extent permitted by medical verification, or because of inability to secure adequate care for children or other incapacitated members except on a part-time basis;

Exhibit C Attached to Answer.

(f) Mental or physical illness or incapacity which has been medically verified to be of a significant or substantial nature so as to prevent such person from engaging in employment; age shall be a basis of unemployability only when it has been verified that the individual would be potentially hazardous to himself or others with whom he is associated; and persons with a history of drug addiction shall be deemed employable only when determined medically to be free of drug use, or participating in a methadone maintenance program or rehabilitation program; or,

(g) The need of such person to provide full-time care for other members of such person's household who are verified to be wholly incapacitated or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the social services district to obtain services or the assistance of others to provide such care.

2. Social Security Numbers.

All persons age 14 and over shall be required to have a social security account number.

3. Medical Information.

Medical verification of illness or incapacity shall include information about:

(a) The anticipated duration of unemployability;

(b) The persons's limitations, if any, as to the kinds of work in which he may engage and the maximum number of hours which he may work; and,

(c) What medical treatment, if any, is indicated to correct or ameliorate his condition.

Exhibit C Attached to Answer.

4. Employability of Drug Addicts.

(a) Persons with a known history of drug use are not to be referred to the State Employment Service in the absence of a medical statement of freedom from drug use or medical verification of the individual's participation in a methadone maintenance program or rehabilitation program.

(b) If an individual has a history of drug use and is unable to provide necessary medical verification to meet the requirements of the State Employment Service, he shall be referred to a treatment agency. If he is known to or has a preference for a particular recognized agency, his choice shall be given consideration. If enrollment in a treatment agency of the client's first choice is not available within a month, he must choose an enrollment in an agency where placement is immediately available until an opening may occur for his original preference.

(c) An individual who refuses treatment from a recognized agency or makes himself unavailable for treatment shall be considered *ineligible for assistance.*

5. Employment of Mothers and Provision of Day Care.

(a) The presence of children in the home shall not in itself be a basis for determining that a mother (or other female caretaker relative) is unemployable. It is the policy of the Department to require such persons to accept employment or training when not ill or incapacitated or otherwise excluded by the Definition of Employable.

(b) Such a person shall be required to accept employment or training leading to self-support unless her presence in the home is essential for the care of her children or other incapacitated members of the family.

(c) In determining the need for a mother to provide full-time care for other members of her household who are fully incapacitated or who are children, the social services official shall consider:

(1) The nature and extent of the incapacity; what effect the mother's absence would have on the health and welfare of the incapacitated person; whether other services or the assistance of others is available, and whether such alternative plans would adversely affect the incapacitated person.

(2) The number of children in the home, their respective ages, the existence of illness, handicap or special needs; what effect the mother's absence would have on health and welfare of the children; whether an adequate plan of child care is available; and whether such plan of child care would adversely affect the health and welfare of the children.

(d) When a mother's presence in the home is not essential, the only deterrent to her engagement in employment or training shall be the absence of an adequate plan of care for the children.

(e) A social services official shall be required to make a diligent effort to provide adequate day care to facilitate the mother's employment and training.

(f) The mother shall be required to make a diligent effort to obtain necessary child care. She

shall verify such effort by providing a written declaration periodically to this effect.

(g) The mother shall be involved in developing the child care plan, and when day care is to be provided by the social services official and alternate types of care are available, shall agree to type of care to be provided.

(h) Social services officials shall be responsible for the development of sufficient, adequate day care, and in particular, the development of family day care homes.

(i) Social services officials shall be responsible for insuring that group day care facilities used by them have been licensed and that in-home day care meets federal and state standards.

6. Referral of Employables to State Employment Service.

(a) All unemployed employable applicants for assistance shall be referred to the State Employment Service for manpower services and certification *prior to the granting of assistance.*

(b) All unemployed employable recipients shall be referred to the State Employment Service on a semi-monthly basis for manpower services and certification.

(c) All unemployed employable recipients satisfactorily participating in an approved program of vocational training or rehabilitation shall be referred to the State Employment Service on a semi-monthly basis for a review of their progress in training, necessary manpower services, and certification.

(d) Reporting will be on a spaced basis during the semi-monthly period, as specified in the procedural section.

(e) A person assigned to and participating in Work Relief (Public Work Project) under the provision of Section 164 of the Social Services Law shall be deemed employable but not employed.

7. Delivery of Checks.

(a) All unemployed employable *grantees*, including those participating full-time in an approved program of vocational training or rehabilitation shall be required to pick up their regular semi-monthly public assistance check at the time of their reporting to the State Employment Service.

(b) The State Employment Service will release the check to the grantee if he appears for delivery. If the grantee fails to comply with the law, the State Employment Service will immediately notify the social services district of the non-compliance for appropriate action and sanctions by the district.

(c) Those unemployed employable recipients and those who are in a full-time approved program of vocational training or rehabilitation, who are not grantees, shall be required to report to the State Employment Service for a review of their progress in training and necessary manpower services on a semi-monthly basis. The family's assistance check will be delivered to the grantee in the usual manner.

8. Failure of Applicants or Recipients to Comply With the Requirements and Sanctions to be Applied.

Exhibit C Attached to Answer.

(a) Generally, the provisions found in Department Regulations 385.5(c), 385.6, and 385.7 are applicable. (See Bulletin 26, pp. 11, 12, 13, 14.)

(b) Specifically, a person shall be deemed to have refused to comply with the requirements of the law, and he shall be considered ineligible for assistance or care if he fails, *without good cause,* to:

(1) Report to the SES;

(2) Accept a referral;

(3) Report to the SES the results of a referral to employment;

(4) Accept employment or training;

(5) Report for employment or training; or,

(6) Continue in employment or training.

(c) The determination of *good cause* shall be made by the social services district immediately upon notification of the recipient's failure to comply with the law. Such determination shall be made on the basis of the recipient's continuing employability in accordance with the Definition of Employable, and in the instance of a job refusal, such determination shall be made in accordance with Department Regulation 385.6 (Bulletin 26). If the failure was *without good cause,* his assistance shall be terminated, or in the instance of an applicant his application shall be denied in accordance with the provisions of Department Regulation 385.7 (Bulletin 26). Such person shall continue to be ineligible for further assistance until such time as he is willing to comply with the requirements of the law, *but:*

(1) A recipient shall not be eligible for any assistance for a period of one month from the termination of assistance.

(2) An applicant shall not be eligible for one month from the time of his failure to comply.

9. Schedule for Implementation.

(a) By no later than July 1, 1971, all recipients of HR, ADC, and ADC—U who are currently classified as unemployed employables shall be referred to the appropriate State Employment Service office.

(b) Immediate assessment of all new applicants for HR, ADC, and ADC—U, and immediate referral of all found to be employable.

(c) Priority shall be given to the assessment, identification and referral of all other HR and ADC males under 50 years of age who are not now classified as employable.

(d) At the point of next recertification or next contact, whichever is earlier, all other ADC, ADC—U, and HR cases shall be reviewed to identify other employables (*i.e.*, mothers, youths becoming 16, males over 50 and others whose employable status has changed).

II. Procedures.

A. Screening.

In accordance with Administrative Letter 71 PWD—34 and I. A. 2. and B. of this letter the local social services districts must rescreen their current cases to identify employables. This screening must be completed prior to July 1, 1971.

Exhibit C Attached to Answer.

B. The Use of Social Security Numbers.

1. It is essential that Social Security numbers be obtained quickly since unemployed employables must have a Social Security number in order to become employed.

2. Ultimately, Social Security numbers will be used as the identification number for State Employment Service and the basis for setting up appointments with State Employment Services for services and check pick up as explained in paragraph II. C. 1 (a) (2). As of July 1, 1971, such Social Security numbers may be so used only if all of an agency's unemployed employables have Social Security numbers. Otherwise, case numbers will be used in their place for the interim period. The local Employment Office shall be advised of what numbers are to be used effective July 1, 1971.

The following procedures for obtaining Social Security numbers are to be followed:

1. Applicants.

Social Security numbers must be obtained for all applicants and others in their families who are 14 years of age or over, regardless of category as they apply for public assistance.

In separated agencies, the applicant should be requested to enter the appropriate number Section B on Form DSS—1229, "Certification of Need for Public Assistance". In agencies in which separation has not yet been effected, the Social Security number should be entered on Form DSS-1163 (Formerly (WS-11) at the time of application. Any individuals who do not have Social Security numbers or who cannot find them must obtain

them in the manner described for undercare recipients below.

2. Recipients—HR and ADC.

A Social Security account number is also required for all persons 14 years of age and over. Agency records must be screened immediately for such numbers. For those individuals for whom a Social Security number is not found, a careful plan should be made in the agency so that the next Social Service employee to be in touch with the family will deliver a Social Security Number Application Form (SS-5, Exhibit I). In separated agencies, any member of the Social Service Team, as well as Volunteers or Outreach workers may take up the matter of the Social Security number since employment is an appropriate Social Service function.

At the time of the contact, the following sources might be checked to obtain the individual's Social Security number:

A Social Security Card;
Recent Income Tax Return;
Withholding Statement, W-2;
Unemployment Insurance Card; and
Pay stubs from former employers.

If this effort still does not produce a Social Security number, an Application Form (SS-5) should be prepared immediately. The individual should be assisted in completing and signing the Application Form, together with an authorization to the Social Security Administration for the release of this information for Home Relief cases (Exhibit I-B). When preparing the SS-5 Form, each item of information is required since the application

will not be processed if it is incomplete. If any of the information requested is not known, the word "unknown" *must* be inserted in the blank space so that the Application Form will be considered complete.

In large agencies, if it is found that many individuals are without Social Security numbers, the applications obtained may be batched in numbers of 50 and delivered to the local Social Security Administration District Office. The transmittal to the Social Security Administration (Exhibit 1-A), contains a blanket Certification stating that individual release for HR cases are on file in the local Social Services agency. It is suggested that Social Services agencies contact the district Social Security office and agree upon suitable batch sizes. In using this procedure batches of applications are to be transmitted in agreed upon sizes accompanied by two copies of a batch transmittal list. This list shall identify the Social Services agency and the transmittal date, and list the recipients for whom Application Forms, SS-5, are being forwarded. Cases shall be listed in alphabetical sequence. The public assistance case number must be indicated next to the recipient's name. In order to speed up processing, it is suggested that applications for persons 16 years of age and under be batched separately, since processing time for these individuals is shorter.

In about two weeks time, the local Social Security District Office should receive a reply from Baltimore and will list each individual's assigned Social Security number next to his name. These batch transmittal lists will then be returned to the appropriate Social Services district. The Social Security numbers obtained for HR and ADC recipients shall be entered on agency records as described above in the procedure for applicants.

Exhibit C Attached to Answer.

C. Referral of Employables to State Employment Service.

(a) Exhibit 8 is a suggested letter to schedule appointments for HR and ADC employables to come in for an employability assessment and Signature ID Card when necessary.

(1) Prepare "Referral to New York State Employment Service" (DSS-1653, see Exhibit 2 attached) in duplicate. Original is hand carried by grantee to New York State Employment Service. Duplicate is filed in Eligibility Record. Instructions for preparation of Form-1653 are contained on the reverse of the form.

(2) Assign a reporting date and time. State Employment Service District offices will make available to each Social Services officer by June 15, 1971, the final calendar schedule which is to be used by each district for assigning reporting dates and times. You will find in Exhibit 3 a model of such a calendar. You will note in some instances, up to a 3 day time lag beyond the normal semi-monthly period. This period of time should not be exceed in making a local adaptation of this model.

Each local Social Services office shall contact the State Employment Service office servicing them and agree on the use of Social Security numbers or case numbers for identifying and referring unemployed employables. A district shall use either a Social Security number or a case number, but not both.

(3) Section 131 of the Social Services Law as amended by Chapter 103, requires the issuance of photo identification cards for persons to whom public

assistance payments are to be paid. An administrative letter will be released in the near future to implement this procedure. However, if the grantee hasn't been issued a photo ID card before he reports to New York State Employment Service, he should be given a Signature ID Card (DSS-1767, Exhibit 4), as a temporary measure for use until a photo ID card is issued. (Agency may use an approved local equivalent where Signature ID Cards are already in use).

All employable persons requiring a Signature ID Card will have to report to the local Social Services agency for issuance. The employable shall sign in the presence of an authorized official and then the official will validate the card by signing. The local Social Services agency shall transmit, to Employment Service, in a letter signed by the Commissioner or his designee, a list of those persons and their signatures who are authorized to validate Signature ID Cards. This list should be supplemented with additions and deletions as they occur.

(4) An "Authorization of Grant" (DSS-638) to issue a special cast grant covering the interim period from July 1, 1971 through the date on which the grantee first reports to the State Employment Service shall be prepared. Reporting dates are determined as explained above. A notice shall be sent to the grantee with this special check informing him that this check is to cover the period from the first of July 1971 through his first reporting date, and information that all future checks in the regular amount will be distributed by the New York State Employment Service at the time of his semi-monthly employment service contact.

Exhibit C Attached to Answer.

NOTE:

(1) The program designation on the DSS-638 shall have an "E" suffix to identify the case as containing an employable. (ADC-E, HR-E).

(2) Accounting will continue to issue semi-monthly checks on the first and sixteenth of the month. The period of the check will be coordinated with referral cycle.

(b) Employables other than grantee presently on assistance.

(1) Prepare Form DSS-1653—"Referral to New York State Employment Service" in duplicate. The original is hand carried by the employable to the New York State Employment Service. The duplicate is to be kept on file by the agency for matching with Form ES-28 which will be originated by the State Employment Service for all persons receiving employment services. Instructions for preparation of Form DSS-1653 are contained on the reverse of the form.

(2) Assign a reporting date as outlined in paragraph II. C. 1. (a) (2) above.

(3) Issue this employable a "Signature ID Card"—(DSS-1767, Exhibit 4) as outlined in paragraph II. C. 1. (a) (3) above. At the time of issuance of the Signature ID Card the employable other than grantee shall be informed that he will not pick up a check at State Employment Service, but must report semi-monthly on the assigned reporting dates as a condition for his continuing eligibility for public assistance.

Exhibit C Attached to Answer.

2. Applicants for Public Assistance.

(a) Applicant (Head of Family) Who is Deemed Employable.

(1) Prepare two copies of "Referral to New York State Employment Service" (DSS-1653, see Exhibit 2 attached). The original copy is hand carried by the applicant to the New York State Employment Service as a prerequisite for eligibility for public assistance.

NOTE:

Emergency grants may be issued in verified emergencies where applicant gives evidence of cooperating.

(2) Applicant hand carries the "Services to Social Services Client" form (ES-28 see Exhibit 5 attached) originated by the New York State Employment Service to the Social Services Department.

(3) Application process is continued and an interim grant (DSS-638) is prepared to carry the case through the first regular reporting date for State Employment Service service contact.

(4) Issue a "Signature ID Card" (DSS-1767 see Exhibit 4 attached) as outlined in paragraph II. C. 1. (a) (2) above.

(5) Assign him a regular reporting date for reporting to New York State Employment Service in accordance with Exhibit 3 attached.

(b) Other Employable Persons included in the Application for Public Assistance.

(1) If other presumptive employables other than the grantee are not present at the time of application, it is the responsibility of the applicant to see that they report to the Social Services office for evaluation of employability. Prepare a DSS-1653 in duplicate, for each employable and instruct him to report to New York State Employment Service immediately with the original copy of the form.

(2) The employable hand carries the "Referral to New York State Employment Service" (DSS-1653) to the Employment office. Following his Employment Service contact, he hand carries the "Services to Social Services Client" Form (ES-28, see Exhibit 5 attached) originated by New York State Employment Service to the Social Services Department as evidence of having reported as required.

(3) Until the ES-28 is received by the Department of Social Services, the needs of the employable shall not be included in the grant of public assistance.

(4) When the ES-28 is received by the Department of Social Services, the employable is assigned a regular reporting date for reporting to New York State Employment Service as outlined in paragraph II. C. 1. (a) (2) above.

(5) Issue a "Signature ID Card" (DSS-1767, See Exhibit 4 attached) as outlined in paragraph II. C. 1. (a) (2) above.

D. Preparation of Payment Rolls for Cases which contain Employables. (See Exhibit 6).

1. All HR, ADC and ADC-U cases with unemployed employables shall, as of July 1, 1971, be issued assistance on a

semi-monthly basis. These cases with "E" designations shall be listed on separate rolls.

In place of the usual semi-monthly rolls, for payments to HR, ADC, and ADC-U cases with unemployed employables, individual daily rolls in case number order shall be prepared in accordance with their reporting dates at the local Employment Office. The assistance checks shall be attached to the respective daily rolls. If there is more than one Employment Office servicing a Social Services district, separate rolls shall be prepared for each State Employment Service office.

The daily rolls shall be summarized by semi-monthly periods and then carried forward to the regular monthly summaries to prepare monthly claims. Separate refund and cancellation rolls shall be prepared for cases with "E" designations.

Where a district normally lists all of its categorical cases on one roll, this procedure may be followed in preparing the daily rolls for cases with unemployed employables.

The daily reporting sequence is determined as outlined in Exhibit 3. This determination shall be made at the time the authorization is prepared. The location of the State Employment Service Office and the date and time of reporting shall be listed thereon.

2. Payment rolls and checks shall be prepared and transmitted on a semi-monthly basis. A footnote entry shall be made on the ADC Schedule A and on Schedule C listing the total payments and total refunds and cancellations relating to ADC-E, ADC-U-E and HR-E payments. Three copies of the roll must accompany the checks transmitted for the first and sixteenth day of the month. Rolls and checks must be

(1) If other presumptive employables other than the grantee are not present at the time of application, it is the responsibility of the applicant to see that they report to the Social Services office for evaluation of employability. Prepare a DSS-1653 in duplicate, for each employable and instruct him to report to New York State Employment Service immediately with the original copy of the form.

(2) The employable hand carries the "Referral to New York State Employment Service" (DSS-1653) to the Employment office. Following his Employment Service contact, he hand carries the "Services to Social Services Client" Form (ES-28, see Exhibit 5 attached) originated by New York State Employment Service to the Social Services Department as evidence of having reported as required.

(3) Until the ES-28 is received by the Department of Social Services, the needs of the employable shall not be included in the grant of public assistance.

(4) When the ES-28 is received by the Department of Social Services, the employable is assigned a regular reporting date for reporting to New York State Employment Service as outlined in paragraph II. C. 1. (a) (2) above.

(5) Issue a "Signature ID Card" (DSS-1767, See Exhibit 4 attached) as outlined in paragraph II. C. 1. (a) (2) above.

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Where a district normally lists all of its categorical cases on one roll, this procedure may be followed in preparing the daily rolls for cases with unemployed employables.

The daily reporting sequence is determined as outlined in Exhibit 3. This determination shall be made at the time the authorization is prepared. The location of the State Employment Service Office and the date and time of reporting shall be listed thereon.

2. Payment rolls and checks shall be prepared and transmitted on a semi-monthly basis. A footnote entry shall be made on the ADC Schedule A and on Schedule C listing the total payments and total refunds and cancellations relating to ADC-E, ADC-U-E and HR-E payments. Three copies of the roll must accompany the checks transmitted for the first and sixteenth day of the month. Rolls and checks must be

transmitted to New York State Employment Service not less than two working days piror to the earliest check delivery date.

3. One copy of the roll will be signed by the cashier in the New York State Employment Service and immediately transmitted back to Social Services as acknowledgement of receipt of the checks transmitted.

4. When a client reports to New York State Employment Service for his service contact his check will be released to him and he will be required to sign the roll in duplicate as acknowledgment of receipt of his check. One copy of the roll with client's signature will be transmitted back to the Social Services district along with any undistributed checks not more than forty-eight hours after the scheduled reporting date. The remaining copy of the roll will become the New York State Employment Service's control. Rolls should be double spaced to insure sufficient space for a signature.

E. "Services to Social Services Clients" Form (ES-28) and returned Checks Not Released.

1. Reports from New York State Employment Service—The "Services to Social Services Clients" Form (ES-28) will be originated by Employment Services for each contact with a Social Service client (see Exhibit 5).

2. When New York State Employment Service indicates that the employable:

(a) Refused services except check delivery;
(b) Failed to report to employer for interview;
(c) Failed to report for work;
(d) Rejected by employer;
(e) Refused job;

Exhibit C Attached to Answer.

(f) Refused referral;
(g) Refused training;
(h) Failed to report for training;

they will batch these reports on top when transmitting the "Services to Social Services Client" Form (ES-28) to Social Services.

3. When "Services to Social Services Clients" Form (ES-28) are received in Social Service Department, they must receive a priority review so that appropriate action (as specified in E) can be taken immediately. In separated agencies, this will be the function of the Income Maintenance Section. In agencies not yet separated, caseworkers must assume this responsibility.

4. Checks returned from the New York State Employment Service shall be transmitted to the Accounting Section for safekeeping until appropriate action is taken to release or cancel them. Required action to reduce the grant or close the cases of individuals who fail to cooperate with the requirements of the law regarding employment and employment counseling shall be taken immediately in separated agencies by the Income Maintenance Section and in non-separated agencies by the designated casework staff in accordance with the instructions included in F.

5. In the case of non-grantee unemployed employables, Social Services districts shall file copies of Forms DSS-1653 by reporting date. As Forms ES-28 are received for non-grantee employables their copy of Form DSS-1653 shall be moved up to their next State Employment Service reporting date. In communities where there is a known problem with the delivery of mail, the agency may wait a period of up to 15 days before applying the sanctions referred to paragraph II. F. to the Forms DSS-1653 remaining in their original

reporting dates indicating they did not report to State Employment Service.

Extreme care must be taken that the "inventory" of Forms DSS-1653 contain at all times only the active non-grantee unemployed employables. Copies of Form DSS-1653 for such applicants shall be added and, in cases where for various reasons (employment, injury, etc.), a non-grantee is no longer an employable, the individual Forms DSS-1653 for these individuals shall be removed.

F. Application of Sanctions.

The local Social Service agency is required to take immediate action to either remove the individual unemployed employable recipient from the total budget, or close the case or in the instance of an applicant to deny assistance when a report from the New York State Employment Service indicates that the individual concerned has failed to comply as defined in I. B. 8. of this letter.

1. Applicants.

Applicants who refuse to register at the New York State Employment Office; who refuse a job offer; or who refuse a referral to a job must be advised immediately, by the Social Services Department, that they are *not eligible* for public assistance.

2. Recipients.

Employable recipients who refuse to register; refuse to report regularly as required; refuse a job referral; or refuse to accept a job offer must be advised immediately that they are *not eligible* for public assistance and that they will be removed from the budget, or, in the case of single individuals, their case will be closed. The present

requirements relating to fair hearings and pre-termination interviews must be observed. (See Bulletins 91b and 28). See Exhibit 9.

3. A change in authorization to effect the action required in I, B. 8. (c), must be processed immediately.

G. Reporting Requirements.

Detailed monitoring must be established in order to provide the necessary reports on the effectiveness of the provisions of the law. Each Social Service agency is therefore required to provide the following:

1. A record of the total number of unemployed employable applicants referred for initial registration.

2. A control of the number of unemployed employable grantees who are required to receive their assistance checks at the New York State Employment Service.

3. A control of the number of employables, other than grantees, referred to the New York State Employment Service for services on a regular reporting date.

4. A record of the number of grantees who fail to report to the New York State Employment Service. (This number can be obtained from the number of checks returned from the New York State Employment Service).

5. A record of the number of employables other than grantees who fail to report to New York State Employment Service. Please see paragraph II. E. 5.

6. A report on the effect of employment registration and services. This information can be obtained by

Exhibit C Attached to Answer.

analyzing "Services to Social Services Clients", Form ES-28 to determine the following information:

(a) Number of persons referred to job.
(b) The number of persons referred to training.
(c) The number of unemployed employable persons hired.
(d) The number of unemployed employable persons accepted for training.
(e) The number of unemployed employable persons who refuse to:

(1) report to State Employment Service;
(2) accept a referral;
(3) report for employment or training;
(4) or continue employment.

7. Social Service agencies shall also report the actions taken on the number of employable persons who fail to cooperate as specified in 6(e) as follows:

(a) Number of cases closed.
(b) Number of employable grantees removed from the grant.
(c) Number of employable persons (not grantees) removed from the grant.
(d) Number of persons not reporting for good cause.
(e) Change in employability status.

(1) Disruption of day care plan;
(2) fully employed;
(3) significant illness;
(4) other (specify).

(f) Temporary illness.
(g) Other (specify).

Exhibit C Attached to Answer.

8. In accordance with item I. B. 5. (f), each unemployed employable mother shall provide the agency with a certification of her efforts to obtain suitable care for her children as frequently as circumstances indicate. *i.e.*, a very rural area where resources are very limited versus an urban area where further efforts might be productive. The Day Care Certification, Form DSS-1775 is Exhibit 7.

In separated agencies, it will be the responsibility of the Validation Section of the agency to verify the information provided by the recipient on Form DSS-1775 at the time of the prescribed field investigation. In agencies that have not yet separated, this must be the function of the caseworker with responsibility for the case.

9. All local Social Service agencies must report the specific information required in G. by the tenth of the month following the month in which the action occurred. Two required forms summarizing and reporting the information needed are attached for this purpose (Form DSS-2192 and Form DSS-2198). In separated agencies, Form DSS-2192 shall be maintained on a daily basis by Income Maintenance staff. In non-separated agencies, the DSS-2192 may be maintained by individual caseworkers, who at the end of each month, will transmit their DSS-2192's to either the Employment Unit, the Resource Unit, the Category Unit or Income Maintenance staff who, based upon the size of the agency and the specific plan approved by the Area Office, will prepare Form DSS-2198 using Forms DSS-2192 and ES-28's. The Employment Register will be updated from the information on the DSS-2192. All DSS-2192 forms will be filed in the agency for audit trail purposes. (See Exhibits 10 and 11).

Exhibit D Attached to Answer.

The original Form DSS-2198 must be sent to the Director, Bureau of Local Management Services, 1450 Western Avenue, Albany, New York 12203. A copy of DSS-2198 shall be sent to the Area Director and a copy retained by each local Social Service agency.

An initial supply of forms will be transmitted to each district as soon as they are printed, subsequently they will be requisitioned in the usual manner.

Exhibit D.

STATE OF NEW YORK

Department of Social Services
1450 Western Avenue
Albany, New York 12203

George K. Wyman
Commissioner

Transmittal No.: 71 PWD-52
Date: June 28, 1971

ADMINISTRATIVE LETTER

To: Commissioners of Social Services.

Subject: Clarification of Questions Raised by Local Districts Regarding Administrative Letter 71 PWD-43.

Distribution: B-2 General Administrative Staff.

In the course of meeting with local Commissioners and their staffs around the State last week, certain questions were raised regarding Administrative Letter 71 PWD-43, which we agreed to explore further in Central Office and release the

answers to all districts in order that there might be a uniform interpretation of these requirements.

We trust the answers in this letter will assist you in the implementation of the requirements of 71 PWD-43. Should any further questions develop, you should contact your Area Office Director immediately.

GEORGE K. WYMAN,
Commissioner.

1. Question—Should the agency change the grantee when he or she refuses to comply with the requirements of Social Services Law, Section 131.4 or Social Services Law, Section 164 and is removed from the family budget?

Answer—Since the grantee is ineligible for assistance for 30 days a new grantee will have to be designated.

When the head of the household is a male, another adult in the family will be designated as the grantee.

When the head of the household is a mother, another eligible adult relative in the household will be designated as the grantee. If there is no other adult relative, payment for the children's care will be made as a protective payment.

2. If a recipient has income from other sources, such as U. I. B., Social Security, etc., is it necessary for an agency to issue a supplementary grant for the initial period prior to their first registration with the New York State Employment Service?

Answer—Since all available income has been applied against the budget needs to arrive at a budget deficit, which is the amount the recipient will receive, the agency may issue the prorated amount to which the recipient is entitled, except that checks for less than $1 should not be issued.

Exhibit D Attached to Answer.

3. Question—How do you handle payment of rent where the client has ordinarily been receiving a full month's rent in advance and will now be receiving semi-monthly grants for rent?

Answer—As an interim measure, for the month of July only, if the recipient's reporting date is prior to the fifth of the month, the rent may be included in the check dated July 1, 1971 which he will pick up at the SES office. If his reporting date is the fifth of the month or later, the rent may be included in the special prorated grant which all recipients who are required to report to SES will receive. Thereafter, a semi-monthly check will be issued. Local agencies should advise the landlords that each semi-monthly check will include one-half of the month's rent.

4. Question—In the case of a new applicant when should the first check be sent to the SES office?

Answer—The needs of the applicant will be met by a special check, to be given to him, until his second reporting date. Such check may include the rent from the first of the month or the preceding month as outlined in the regulations (352.7 (g) (5)) and Bulletin 134. This does not preclude the fact that the applicant must report to SES on his first reporting date even though he will not pick up a check at that time.

5. Question—What do we do in the case of a pregnant woman who is in receipt of Unemployment Insurance Benefits and is considered by U. I. B. until her eighth month of pregnancy?

Answer—The woman is considered unemployable from her fourth month of pregnancy by the Department of Social Services and will be removed from the unemployed em-

ployable status. However, in order to remain eligible for U. I. B. benefits she must continue to report to the U. I. B. office until her eighth month of pregnancy or until she is classified as unemployable by them.

6. Question—How will WIN recipients receive their checks?

Answer—The SES WIN team will work out the certification and check delivery.

7. Question—What about rent for Public Housing that must be paid within a specified period and if not a penalty will be assessed?

Answer—We do not have an answer at this time. The question will be discussed with the Housing Authority and if we are given an easement, you will be advised at once.

8. Question—How are full-time college students handled when they apply for assistance during the summer months?

Answer—If they report to SES, they are eligible, however, if they create an impediment to their employability with SES or a prospective employer they are ineligible.

9. Question—When a client who is an unemployed employable moves to another social services district, who controls the reporting and check issuance to the new SES office?

Answer—The social services district which originally had the case must contact their district Superintendent to ascertain which SES office the recipient must report to and the name of the district manager. They must then contact the manager at the new SES office immediately by telephone advising them that the client will report to them, and will pick up the check until the end of the month succeeding the

month that the client moved, (Regulation 311.3) obtain the new reporting dates and request that all ES-28's or undelivered checks be returned to them. The original social service district must also notify the new social services district that the client is now in their area and explain the arrangement made with the new SES office. Lastly, they must notify the client of the arrangements and advise him of his responsibility to report to the new SES office and social services dist that the client is now in their area and explain the arrangement made with the new SES office and social services district office.

10. Question—Are Cuban Refugees included in the employment program?

Answer—Cuban Refugees are not included in the employment program, however, they must be extended all manpower services for employment but their checks will be mailed to them rather than picking them up at SES.

11. Question—Isn't there a danger that the confidential information concerning names of people and amounts of assistance, which will be on the direct payment rolls at SES, will be misused and we will be challenged by HEW on the issue of confidentiality?

Answer—The Department has shared this problem with SES. Employment Service offices will cover the rolls with a template to allow only the individual persons name, address and amount of the check to be visible. We have been assured, by SES, that the confidentiality will be maintained.

12. Question—With the requirement of having unemployed employables picking up their checks at local SES offices on various days of the month a question has been raised as to whether a similar change should be made in the issuance of ATP's for the Food Stamp Program?

Exhibit D Attached to Answer.

Answer—No change will be made in the issuance of semi-monthly ATP's in the case of unemployed employables. Their ATP's shall continue to be issued and mailed with all other semi-monthly ATP's on the first and sixteenth of the month. ATP's shall contain no restriction as to cashing in a given month and shall be valid for an entire month. Local districts shall make such arrangements with their participating banks.

It shall be the responsibility of the client to manage his money affairs in such a manner as to be able to cash the two ATP's he receives in a month from the funds available from his semi-monthly checks.

In order to accommodate these procedures, some existing contracts between the banks and local districts will have to be modified to provide for the cashing of ATP's during every business day in the month. Furthermore, the banks will no longer be in the position to meet the tenth of the following month deadline for filing the required reports relating to the Food Stamp Program. We will have to obtain cooperation of the USDA to move back the reporting dates until at least the twentieth of the month following the month of activity.

13. Question—When an individual case is closed or an individual is removed from the family budget for non-compliance, what is the effective date of the action?

Answer—The effective date is the date the action is taken which is seven days from the date of non-compliance.

The fact that the check that has already been issued may cover a period into the next month has no significance. What is important for statistical purposes is *the date of the action.*

Exhibit D Attached to Answer.

14. Question—What procedure should be followed when a former recipient, who has been removed from the budget or the case has been closed for non-compliance, appears after 30 days stating he is willing to comply and requests to be reinstated?

Answer—When a single individual case has been closed the person must complete a new application and follow the normal routine for applicants.

If an individual was formerly in receipt of assistance in a family group, he must sign a certification (see exhibit attached) stating he is willing to comply with the law. He must also produce an ES-28 before he is included in the family budget.

15. Question—Do all cases that have unemployed employables have an "E" suffix to the category?

Answer—Yes, except when the only unemployed employable in a family case is not the grantee, the "E" classification shall not be used on the authorization or in the payment process. The assistance grants will be handled as regular ADC or HR which will have the effect of having all "E" cases as those where check delivery is the responsibility of the State Employment Service.

Of course, mandated reporting requirements must be met by the non-grantee unemployed employable in such cases. Eligibility/Income Maintenance staff (or in agencies not yet separated, casework staff) will verify that non-grantees report as required.

16. Question—What procedures will the Town Welfare Officers follow for Home Relief cases that were formerly ADC-U-FNP?

Exhibit D Attached to Answer.

Answer—The Town Welfare Officer must become knowledgeable of all the requirements in PWD-43 and must follow the same procedures outlined in this release The actual processing is a matter that the County Commissioner should work out with the Town Welfare Officer so that all town home relief checks and statistics become incorporated into the county system.

17. Question—When a person becomes ineligible for cash assistance does this affect his eligibility for medical assistance and food stamps?

Answer—Yes, ineligibility applies to all types of assistance.

18. Question—What can be done about expediting checks when the County Fiscal Officer refuses to sign checks before the monthly advance is received or no earlier than a time specified by local regulation?

Answer—A copy of the law should be submitted to the County Fiscal Officer and arrangements worked out to assure that the checks are released to SES on time. If the local social services official is unable to work out an agreeable arrangement.

It should be noted that recipient checks will be issued on the first of the month and the Local Fiscal Officer is responsible to provide funds for local needs.

19. Question—How are Income Maintenance or Public Assistance Units notified when checks are returned by SES?

Answer—Accounting must prepare a list and submit it immediately to Income Maintenances in separated agencies or PA units in agencies that are not yet separated.

Exhibit D Attached to Answer.

20 Question—When and where are voucher payments, dual payee checks and protective payments sent?

Answer—This question will be resolved shortly and you will be notified.

Exhibit 1.

DSS-1799 Social Service District

Certification for Reinstatement
of Public Assistance Grant

Name ..... Date .....
Address .....
Present Case Name .....
Case Number .....

I certify that I am now willing to comply with all regulations pertaining to the receipt of Public Assistance including the referral to the New York State Employment Service. I further certify that I will accept any referral to a job or training program and that I will remain on the job if I am accepted.

.....
Signature Date

[ ] ES-28 received from New York State Employment Service (The ES-28 must be received before assistance can be given).

.....
Worker Signature Date

Exhibit E Attached to Answer.

Exhibit E.

STATE OF NEW YORK

(Imprint)

6320

1971-1972 Regular Sessions

IN SENATE

April 1, 1971

Ch. 101

Introduced by COMMITTEE ON RULES—read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT

To amend the social services law and the labor law, in relation to public works projects for employable recipients of home relief and aid to dependent children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred sixty-four of the social services law, such section having been added by chapter seven hundred fourteen of the laws of nineteen hundred fifty-nine, paragraph a of subdivision two thereof having been last amended by chapter six hundred seventy-three of the laws of nineteen hundred sixty-two, is hereby amended to read as follows:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

Exhibit E Attached to Answer.

§ 164. Work relief. 1. As hereinafter provided, employable persons receiving home relief [may] *shall* be required to perform such work as [may] *shall* be assigned to them by the [public welfare] *social services* official furnishing such home relief *or by the state industrial commissioner as hereinafter provided.*

2. (a) [When the legislative body] *The social services official* of a county, city or town which is responsible for providing home relief shall [determine and direct that] *provide for the establishment of public work projects for the assignment of* employable persons in receipt of home relief [shall be assigned] to perform work for such county, city or town[,] *or for the state, and* the head of any department, bureau, division or other unit thereof may request that such persons be assigned to his unit. *In providing for the establishment of such public work projects, such social services official may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section.* In the case of a county [public welfare] *social services* district which is responsible for providing home relief within towns or cities within the county, [such determination shall be deemed to authorize the assignment of such] persons *may be assigned* to work for the state or any city, town, or village in the county [within which the department is so responsible], and the head of any department, bureau, division or other unit of the state or any such city, town or village may request such assignment. In the case of a town which is responsible for providing home relief within a town, [such determination shall be deemed to authorize the

assignment of such] persons *may be assigned* to work for any village in the town [within which the town is so responsible], and the head of any department, bureau, division or other unit of any such village may request such assignment. The request shall be addressed to the [public welfare] *social services* official *or to the state industrial commissioner, in appropriate instances,* and shall indicate the number of persons who can be used and the character of the work to be performed.

(b) The [public welfare] *social services* official *or the state industrial commissioner* shall thereupon assign such persons in receipt of home relief who, in his judgment, are able to perform the work indicated, provided he is satisfied that such persons will not be used to replace, or to perform any work ordinarily *and actually* performed by, regular employees of any department or other unit of such county, city or town, or to replace, or to perform any work which would ordinarily be performed by, craft or trade in private employment.

3. (a) Persons shall be assigned to perform only such work as they are able, in the judgment of the [public welfare commissioner] *social services official or the state industrial commissioner,* to perform.

(b) The number of days of work to be given each person shall be determined by the amount of the budget deficit of the recipient and his family computed on local home relief budget schedules. No person shall be required to work for more than the number of days necessary to earn such amount or to be paid more than such amount. No person shall be required to work more than eight hours in a day or more than forty hours in a week.

4. Any person who refuses to report for or to perform work to which he has been assigned by the [public welfare]

social services official *or the state industrial commissioner* shall thereupon become ineligible for home relief.

§ 2. Such law is hereby amended by adding thereto a new section, to be section three hundred fifty-k, to read as follows:

§ 350-k. Public works projects. 1. Public works projects meeting state and federal requirements shall be established, or the establishment thereof shall be provided for, by every social services district for the conservation of work skills and/or the development of new skills of parents and other eligible relatives receiving aid to dependent children from such district.

2. In providing for the establishment of such projects, the district may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section.

3. A parent, or other eligible relative whose maintenance is included in the grant and allowances, may be assigned to participate in such a public work project, only if: (a) appropriate standards of health, safety and other work conditions are maintained;

(b) the number of days work to be given each person shall be determined in the case of a parent, by the amount of the grant or allowance, and in the case of such other eligible relative, by the amount included in the grant or allowance for his maintenance, provided that no person shall be required to work for more than the number of days

necessary to earn such amount or to be paid more than such amount, or to work more than eight hours in a day or more than forty hours in a week;

(c) such assignment would not result in the displacement of regular workers or in the performance by such parent or relative of work that is being performed by employees of public or private agencies, institutions or organizations;

(d) provisions are made to extend coverage to such parent or relative under the workmen's compensation law;

(e) such person is deemed employable under the provisions of subdivision four of section one hundred thirty-one of this chapter;

(f) provisions are made to permit such parent or relative to seek regular employment and/or to secure appropriate training or re-training opportunities which may be available.

4. A parent or other eligible relative required to participate in a public work project who fails to participate in such project, without good cause, as defined by regulation of the department, shall thereupon become ineligible for aid to dependent children.

5. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not bring an action or proceeding against any person, to recover for payments correctly made to a parent or other eligible relative on account of his participation in a public work project.

6. (a) Expenditures may be made by a social services district on behalf of a parent or other eligible relative participating in a public work project, only so long as federal aid for aid to dependent children shall be extended to such expenditures.

(b) Such expenditures shall be eligible for state reimbursement in accordance with the provisions of section one hundred fifty-three of this chapter.

§ 3. Section eight hundred twenty-one of the labor law, as amended by chapter one hundred twenty-eight of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

§ 821. State training courses. The commissioner may provide for vocational and related, institutional and on-the-job training courses as described in section five hundred ninety-nine of this chapter *and for the administration of public work projects for recipients of public assistance*, and *may* contract for [this purpose] *these purposes* with *public and private agencies* including public and private institutions of learning, employers or other appropriate organizations. He shall select for and refer to such training courses unemployed and under-employed persons who would meet the conditions for approval as specified in [such] section *five hundred ninety-nine of this chapter. He shall select and refer to public work projects all public assistance recipients registered at employment offices of the department who are neither referred thereby for employment in the regular economy or for occupational training, nor assigned to public works projects by public welfare officials, made to a parent or other eligible relative on account of his participation in a public work project.*

6. (a) Expenditures may be made by a social services district on behalf of a parent or other eligible relative participating in a public work project, only so long as federal aid for aid to dependent children shall be extended to such expenditures.

(b) Such expenditures shall be eligible for state reimbursement in accordance with the provisions of section one hundred fifty-three of this chapter.

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§ 4. This act shall take effect July first, nineteen hundred seventy-one.

Exhibit F Attached to Answer.

Exhibit F.

STATE OF NEW YORK

Department of Social Services

1450 Western Avenue
Albany, New York 12203

GEORGE K. WYMAN
Commissioner

Transmittal No.: 71 PWD-48
Date: June 15, 1971

ADMINISTRATIVE LETTER

To: Commissioners of Social Services
Subject: Public Work Projects
Distribution: B-2 General Administrative Staff

I. A. LEGAL BASIS

Chapter 101 of the Laws of 1971, amended Section 164 of the Social Services Law to require each social services district to provide for the establishment of Public Work Projects for the assignment of employable persons on home relief. In establishing the Public Work Projects, a social services district is authorized to contract with the state Industrial Commissioner for the establishment and implementation of the projects and for the assignment of persons, if the Industrial Commissioner is agreed to such a contract.

The amended law further requires that all employable persons receiving home relief are to perform such work as shall be assigned to them by the social services official or by the state Industrial Commissioner.

Exhibit F Attached to Answer.

B. PURPOSE

1. The mandated development of Public Work Projects as specified by Chapter 101, provides for an expansion of opportunities for work in such projects for those recipients who have been unable to secure employment in the regular economy. It is anticipated that employment on Public Work Projects will have a positive influence on the attitudes and morale of the participants and will also have a beneficial effect on their families.

Public Work Projects shall provide the following:

(a) Work experience in preference to inactivity, while also providing work training for the inexperienced;

(b) Meaningful work for the recipient, while providing meaningful service to the public;

(c) The conservation and/or the development of work skills in order to maintain recipients' employability, thereby enabling participants to move from the Public Work Projects into the regular labor market.

2. Implementation of amended Section 164 of the Social Services Law in no way relieves the social services district from its responsibilities as specified in Section 131.4 of the Social Services Law to require all employable applicants and/or recipients of assistance to report initially and semi-monthly thereafter to the State Employment Service Office for Manpower Services and placement. Neither is the recipient relieved of his responsibilities as specified in Section 131.4 of the Social Services Law to report initially and semi-monthly thereafter to the State Employment Service and in the instance of a grantee to pick up his public assistance grant at the State Employment Service Office.

Exhibit F Attached to Answer.

C. TYPES OF PROJECTS

Recipients may be assigned to work for State or any city, town or village in the county (See SSL Section 164).

Projects, generally, will fall within four broad areas:

1. To maintain or to develop adequate work habits. Examples of such projects would be as follows:
   (a) simple maintenance of recreation areas, roads, parks, office buildings, pick-and-shovel work, etc.
   (b) routine general office and clerical work, such as, filing, simple record keeping, etc.
   (c) providing aid and assistance at an untrained level in institutions, on playgrounds, etc.
2. To maintain and to improve existing skills. Examples of such projects would be:
   (a) improvement of recreation areas and facilities, auto mechanics, building maintenance, etc.
   (b) provision of service in the recreation field, food service field, etc.
   (c) office and clerical work, including typing, stenography, bookkeeping, etc.
3. To develop new skills. Examples of such are:
   —skilled office and clerical positions,
   —skilled appliance and equipment repair,
   —skilled food service trades.
4. Projects of special interest to the local government.

Such projects could be an amalgam of the above three, but would be primarily focused on such special interests

as improving the environment, cultural activities beautification of roadsides, parks, etc. Other kinds of activities of a specialized interest area might be in the Food on the Table Program.

Although such projects specified under No. 3 would be generally to provide higher skilled type training, it would not be considered replacement of regular employees, since individuals participating in such projects would be working along with the regular employee, gaining the necessary experience and training in the specific area.

D. GENERAL REQUIREMENTS FOR OPERATION OF PROJECTS

Public Work Projects shall meet the following minimal requirements:

1. Reasonable assurance and be performed in such a manner to insure that the work is useful;

2. Persons assigned to such projects will not be used to replace, to perform any work ordinarily and actually performed by regular employees of any department or other unit of government, or to replace or to perform any work which would ordinarily be performed by craft or trade in private employment. (In the event of an extreme emergency, such as a flood, fire, etc., such a restriction could be waived so long as the work to be performed was work normally undertaken by the sponsor of the project.);

3. Appropriate standards of health, safety and other conditions are established and maintained. Participants should be given adequate protection against hazards or activities which would adversely affect their health;

4. Sanitary facilities should be supplied or available, and a basic standard of cleanliness be maintained;

5. Participants shall be required to perform only those physical activities which are within their established physical capabilities;

6. Adequate first-aid supplies shall be available at the site of the project;

7. Recipients assigned to Public Work Projects shall be insured in accordance with the provisions of the Workman's Compensation Law of the State of New York.

8. Adequate time records shall be kept by the sponsor;

9. There shall be no discrimination on the grounds of race, color or national origin;

10. A recipient shall be required to work the number of days as determined by the amount of the grant, provided he shall not be required to work for more than the number of days necessary to earn such an amount or to be paid more than such an amount, or to work more than 8 hours in a day, or more than 40 hours in one week, or the customary full work week of the employer, if less. Payment credits for work shall be made at the State minimum wage or at the wage paid to local government employees in the classified services for comparable work; and

11. Where practical, the participant's work should be so scheduled so as to make time available for him to report to the State Employment Service and to look for employment, as well as necessary time to meet with the caseworker from the Social Services Department. Where such scheduling is not practical, a system of release time to accomplish these pruposes shall be provided.

Exhibit F Attached to Answer.

12. Whenever a recipient fails, without good cause, to comply with the requirement to accept referral to and participate in a Public Work Project he shall be ineligible for Home Relief.

E. RESPONSIBILITY OF LOCAL DEPARTMENTS OF SOCIAL SERVICES

Local Departments of Social Services will have the following responsibilities:

1. Develop a sufficient number and variety of Public Work Projects within their district to insure the availability of such a project for all of their unemployed employable Home Relief recipients who have been unable to secure employment in the regular economy.

2. Assign to Public Work Projects those recipients for whom S. E. S. have been unable to place in the regular economy after 30 days from the date the recipient first received assistance.

2. (Alternate) If the S. E. S. opts to contract to operate the Public Work Projects in the district, the S. E. S. would assign the individual to the appropriate project and so notify the social services district.

3. Monitor the participation of the individuals and take appropriate action when an individual fails to report to a Public Work Project, or fails to continue to participate in such projects.

4. Provide a pre-placement physical whenever there is any reason to suspect a health problem or whenever an individual requests such an examination.

5. Provide transportation or meet the cost of transportation to a central point and provide necessary grants and allowance for lunches.

Exhibit F Attached to Answer.

6. Insure that adequate child care is provided to children of mothers or other caretakers who are participating in the program. The cost of such child care shall be met as a "Purchase of Service."

9. Move as rapidly as possible to place all of their unemployed employables, who are unable to secure employment in the regular economy or who are not in an approved training program after being on assistance for 30 days, into Public Work Projects, as follows:

   (a) By October 1, 1971, a minimum of 30%

   (b) By November 1, 1971, a minimum of 50%

   (c) By December 1, 1971, a minimum of 70%.

10. Inform the appropriate S. E. S. office of the location and work component of each Public Work Project available in the social services district.

11. Designate at least one staff person to act as coordinator/liaison for the program. Such person would be responsible for recruitment of sponsors and in general for the program in the district. For those districts having a WIN Program, this function might be handled by the WIN unit.

F. RESPONSIBILITY OF SPONSORS

Sponsors of Public Work Projects shall adhere to general requirements as specified above and, in addition, shall:

1. Submit to the local social services district (or to the Industrial Commissioner where contractual arrangement has been made) a description of the Public Work Project which they are prepared to operate, including:

   (a) the nature of work to be performed,

(b) guarantees that the general requirements are met,

(c) agreement to provide necessary supervision and any additional equipment required by the project.

2. Maintain time records as noted previously which will include:

(a) the name of the sponsoring agency,

(b) participant's name, social security number, and social services case number,

(c) the type of work performed,

(d) the period covered by the time report,

(e) the exact time the participant was on the job, and

(f) a prevailing rate per hour for the job.

3. Transmit such time records to the social services district on a regular basis. (Where a contractual arrangement exists with the Industrial Commissioner, such time records shall be transmitted to the Industrial Commissioner.)

4. Prompt notification to the appropriate agency of a participant's absence, except when such absence is on a preplanned basis.

5. Provide transportation for recipients from a central point to the individual Public Work Project site.

6. Supervisors of such projects shall be required to report any illness or injury to the appropriate administrative office.

7. When a participant is absent from the project because of illness or injury, the sponsor shall require medical verification of the participant's ability to work, in ac-

cordance with the same rules as apply to regular employees of the sponsor. Payment for such medical verification is to be made by the social services districts under the MA Program.

8. Provide the appropriate administrative agency, *i.e.*, either the social services district or the Industrial Commissioner, with periodic reports as to the individual's attendance, participation, attitudes, etc., as may be required.

9. Provide the tools and equipment needed by the participant.

10. Provide participants with necessary items of special clothing required by the nature of the project; *i.e.*, "hard" hats, safety shoes, foul weather gear, etc.

The Law regarding Public Work Projects becomes effective July 1, 1971. Revised regulations and page replacements for Bulletin 26 will be issued shortly.

II. *Procedure*

A. *Screening*

Local Social Services districts were advised in 71 PWD-34 and 71 PWD-43 to screen their current caseload to identify employables prior to July 1, 1971. If Home Relief Employables cannot be identified from this roster, it will be necessary to set up a separate Home Relief Roster and keep such roster current by addition and deletions as they occur. As unemployed employable Home Relief recipients are assigned to Public Work Projects, it will be necessary to enter the suffix "WR" after their case number on the appropriate roster.

Exhibit F Attached to Answer.

B. *The Use of Social Security Numbers*

It is essential that Social Security numbers be obtained quickly since unemployed employables must have a Social Security number in order to become employed. Should the employable not have a Social Security number, the procedure outlined in 71 PWD-43 for recipients (page 10, Item 2), shall be utilized.

C. *Referral to State Employment Service*

Unemployed employable Home Relief recipients shall be referred to the New York State Employment Service for regular reporting for services and check delivery in accordance with the procedure outlined in 71 PWD-43.

D. *Assignment to Public Work Projects*

When an employable Home Relief recipient has been in receipt of assistance for thirty days and such recipient has not been placed in employment by the State Employment Service, he shall be assigned to a Work Relief Project by the local Social Services district.

Alternate Procedure—When a local Social Services district has contracted with the State Industrial Commissioner to operate Public Work Projects, the unemployed employable Home Relief recipient will be placed in a Public Work Project, directly. State Employment Service will use Form ES-28, "Services to Social Services Applicants," to notify Social Services districts of such placement.

E. *Application of Sanctions*

Local Social Services districts are required to take immediate action to either remove the unemployed employable Home Relief recipient from the total budget or

close the case when such person fails to report to a Public Work Project or fails to continue to participate in said project without good cause. See Department Regulation 385.14 for determination of good cause.

II. Procedure (Continued)

The State Department of Social Services will supply Form DSS-1784 (See Exhibit 1, attached), "Notice of Failure to Report or Continue to Participate in Public Work Projects". Local districts shall make a supply available to each Public Work Project supervisor in their district for use in notifying the district of an unemployed employable's failure to report or continue to participate in a Public Work Project (except where such absense is pre-planned).

Unemployed employable recipients who refuse to report to, or continue to participate in a Public Work Project must be advised immediately that they are not eligible for public assistance and that they will be removed from the budget, or in the case of single individuals, their case will be closed. The present requirements relating to fair hearings and pre-termination interviews must be observed (See Bulletins 91b and 28).

A change in authorization to effect the action required to remove the recipient from the total budget or close the case must be processed immediately.

F. *Reporting Requirements*

Detailed monitoring must be established in order to provide the necessary reports on the effectiveness of the provisions of the law. Each Social Services agency is therefore required to provide the following:

Exhibit F Attached to Answer.

a. On a monthly basis;

1. A record of the total number of unemployed employable Home Relief recipients by grantee and other than grantee.

2. A record of the total number of Work Relief slots available in the district.

3. A record of Work Relief slots filled by grantee and other than grantee.

4. A record of the total number of unemployed employable Home Relief recipients assigned to a Public Work Project who failed to comply with provisions of the law as follows:

   (a) Number of persons who failed to report to a project by grantee and other than grantee.

   (b) Number of persons who fail to continue to participate in a Work Relief Project by grantee and other than grantee.

5. A record of the actions taken on the number of persons placed in a Public Work Project who failed to comply with the law as follows:

   (a) Number of cases closed

      (1) Failed to comply (HR single case only).

      (2) Fully employed.

   (b) Employable removed from grant by grantee and other than grantee.

   (c) Assistance continued by grantee and other than grantee due to a:

Exhibit F Attached to Answer.

(1) Change in employability status

a. Because of a disruption in Child Care.

b. Fully Employed.

c. Significant Illness.

d. Other—specify.

(2) Temporary Illness.

(3) Other—specify.

6. A record of Work Related Expenses broken down by

(a) Medical Examinations (includes pre-placement physical examinations and the cost of examinations required by sponsors of Public Work Projects as a prerequisite for a recipient's continuing in a Work Project after being off the job because of a prolonged illness or serious injury.)

(b) Day Care Expenditures for Work Relief Project participants.

(c) Transportation and Lunch Expenses for Work Relief Project participants.

NOTE: These expenditures will continue to be claimed on the appropriate Schedules C, D or G.

7. A record of the total net budget reduction caused by the closing of cases or removal of employables from grants.

b. On a quarterly basis;

A listing of Public Work Projects in operation in the district by Program Sponsor, Project Activity, number of slots available and number of slots filled.

G. Local Social Services districts shall record the data necessary to meet the statistical requirements in Section F.a. on a DSS-2192, "Income Maintenance Section Analysis of Employment Referral Actions", in such a manner as to identify action taken because an unemployed employable Home Relief recipient failed to comply with the law.

In the first column for case number and category, enter HR-WR or if the agency wishes, the entry may be in red or the HR cases might be segregated in order to assure correct statistics.

In separated agencies, Form DSS-2192 shall be maintained on a daily basis by Income Maintenance staff. In non-separated agencies, the DSS-2192 may be maintained by individual caseworkers, who at the end of each month, will transmit their DSS-2192's to either the Employment Unit, the Resource Unit, the Category Unit or Income Maintenance staff who, based upon the size of the agency and the specific plan approved by the Area Office, will prepare Form DSS-1773 using Forms DSS-2192 and DSS-1784's.

All Social Services districts must report the specific information required in Section F.a. by the tenth of the month following the month in which the action occurred. The required form for this purpose is DSS-1773, "Monthly Report of Work Relief Program Referrals",

is attached (See Exhibit 2). The original of Form DSS-1773 must be sent to the Director, Bureau of Local Management Services, 1450 Western Avenue, Albany, N. Y. 12203. A copy shall be sent to the Area Director and a copy retained by each local Social Services agency.

Local Social Services districts must report the specific information required in Section F.b. by the tenth of the month following the closing of the quarter. A required form for this purpose, DSS-1792, "Quarterly Report of Public Works Program", is attached (See Exhibit 3). The original of Form DSS-1792 must be sent to the Director, Bureau of Local Management Services, 1450 Western Avenue, Albany, N. Y. 12203. A copy of Form DSS-1792 shall be sent to the Area Director and a copy retained by each local Social Services agency.

An initial supply of forms will be transmitted to each district as soon as they are printed. Subsequently, they will be requisitioned in the usual manner.

GEORGE K. WYMAN,
Commissioner.

Exhibit G Attached to Answer.

Exhibit G.

STATE DEPARTMENT OF SOCIAL SERVICES
ALBANY, NEW YORK

Pursuant to the provisions of sections 20 and 34, 131 and 164, as amended, of the Social Services Law, I, ~~George K. Wyman~~ Barry L. VanLare/Acting, Commissioner of Social Services, do hereby amend in part, as hereinafter indicated, Subchapter B of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective July 1, 1971. Part 385 is hereby REPEALED, and a new Part 385 is substituted in lieu thereof, to read as follows:

PART 385

RESTORING EMPLOYABLES TO SELF-SUPPORT

Section 385.1 Definition of an employable person. (a) Each ADC or HR applicant or recipient age 16 and over shall be determined employable except by reason of:

(1) full-time employment;

(2) attendance at school, including a vocational or technical school, a college or a university, for a minor other than an emancipated minor;

(3) attendance full-time in grade or high school for an emancipated minor;

(4) full-time, satisfactory participation in an approved program of vocational training or rehabilitation which shall include but not be limited to participation in the Work Incentive Program or a two-year college program with a specific vocational objective;

Exhibit G Attached to Answer.

(5) part-time employment to the extent permitted by medical verification, or to the extent permitted by inability to secure adequate care for children or other incapacitated members except on a part-time basis;

(6) mental or physical illness or incapacity medically verified to be of such significant or substantial nature as to prevent such person from engaging in employment; age shall be a basis of unemployability only when it is verified that the individual is potentially hazardous to himself or others with whom he is associated; and persons with a history of drug addiction shall be deemed employable when determined medically to be free of drug use or to be participating in a methadone maintenance program or a rehabilitation program; or

(7) the need of such person to provide full-time care for other members of such person's household who are verified to be wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the social services district to obtain services or the assistance of others to provide such care.

(b) A HR recipient participating in a Public Work Project established under Section 164 of the Social Services Law shall be deemed employable but not employed.

385.2 Check delivery. Each unemployed grantee of public assistance and each grantee who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his regular public assistance grants and allowances in person from the State Employment Service.

Exhibit G Attached to Answer.

385.3 Planning for employment, rehabilitation and training. (a) The social services district shall, when circumstances so require, provide:

(1) medical and other diagnostic examinations, when not otherwise obtainable, for the purpose of determining an applicant or recipient's employability or potential for rehabilitation or training;

(2) medical care, when not available through other agencies, to assist in restoring a recipient to a condition of self-support.

(b) The social services official shall:

(1) require an applicant or recipient, as a condition of eligibility for assistance and care, to:

(i) undergo a medical examination or other diagnostic assessment necessary for the purpose of determining his employability or suitability for training or rehabilitation. Such medical examinations shall not be required routinely, except for the WIN Program, but shall be related to the client's previous health and employment history and current health problems. Minors shall not be referred for a medical examination without the written consent of parent or guardian. The purpose of the examination shall be clearly explained to the recipient.

(ii) accept referral to or work in employment in which he is able to engage;

(iii) accept referral to or enroll in a program of vocational rehabilitation or training when such is deemed necessary;

(iv) give evidence as requested, that he is actively seeking employment; and

(v) accept referral to or participate in Work Relief on a Public Work Project, when appropriate;

(2) require an unemployed applicant or recipient who has a known history of drug abuse and who is unable to provide medical verification necessary for him to be declared employable, to accept referral to and to participate in an approved treatment program in accord with the following:

(i) if the applicant or recipient is known to or has a preference for a particular recognized agency, his choice shall be given consideration;

(ii) if enrollment in a treatment agency of his choice is not available within a month, he must choose enrollment in an agency where placement is immediate until an opening occurs in his preferred agency; and

(iii) an individual who refuses treatment from a recognized agency or makes himself unavailable for treatment shall be considered ineligible for public assistance;

(3) require an unemployed employable mother or other female caretaker relative to accept employment or training except when excluded for reasons specified in Department Regulation Section 385.1. In making a determination as to whether such person's presence in the home is essential for the care of her children or other incapacitated member of the family, consideration shall be given to the number of children at home, their ages, existence of illness, handicap or special needs, effect of the mother's/caretaker's absence on the health and welfare of the children or the incapacitated person,

and availability of adequate alternative plan or care, except that

(i) When the mother or female caretaker relative's presence in the home is not essential, the only deterrent to her participation in training or employment being the absence of an adequate plan of care for the children, the social services official shall:

(a) require the mother/caretaker to make diligent effort to obtain necessary child care and verify such efforts by providing a written declaration periodically;

(b) develop sufficient and adequate day care, and in particular, family day care homes to facilitate the mother's/caretaker's employment training;

(c) involve the mother/caretaker in developing the child care plan, and when day care is to be provided by the social services official and alternate types of care are available, she shall agree to the type of care to be provided;

(d) insure that group day care facilities used for the children have been licensed and in-home day care meets federal and state standards. Persons providing inhome care shall:

(1) be mature persons with an interest in and an ability to care for children and have good physical health with no mental or physical handicaps which would prevent them from giving adequate care;

(2) have time free from other responsibilities to serve the mother's family during the hours the children are under their supervision;

Exhibit G Attached to Answer.

(3) not leave the children unsupervised at any time nor care for more than five children including their own;

(4) serve adequate and nutritious meals and snacks to the children at appropriate intervals;

(5) provide appropriate health care for the children with particular regard to personal hygiene and safety and arrange to have available a person to call upon for assistance in case of emergency;

(4) provide services to deal with personal factors, such as personality, behavior characteristics, attitude to work, or lack of skills and family problems which prevent or limit persons in their use of training and in their achievement of stable employment;

(5) utilize public and voluntary agencies and other community resources, in the field of vocational rehabilitation, health, vocation and educational facilities and programs, including such agencies as rehabilitation centers and workshops, cooperating hospitals or clinics, community action agencies and neighborhood centers;

(6) insure that staff is informed of the functions and services of available training and rehabilitation services, both public and private;

(7) develop appropriate cooperative relationships with local employment and training agencies and facilities;

(8) establish special employment divisions and units when necessary in accordance with standards and requirements established by the Department, to coor-

dinate employment and training activities, to maintain appropriate liaison with employment and training agencies and to carry on other manpower functions authorized and approved by the Department;

(9) identify to local education authorities those public assistance recipients who may benefit from literacy training;

(10) evaluate each marginally and potentially employable person and utilize all appropriate resources for the restoration of health, aptitudes, and capabilities or the development of new aptitudes and skills so that they may receive manpower services;

(11) provide restorative medical services including provision of hearing aids, eye glasses and prosthetic devices to restore recipient to a condition of employability.

385.4 Referral of employables to SES. (a) Each unemployed employable applicant for HR and ADC shall be referred to the State Employment Service for manpower services and certification prior to the granting of assistance; however, a grant for emergency assistance to cover the period of time required by an applicant to allow him to report initially to SES and to obtain certification shall be provided.

(b) Each unemployed employable recipient of HR and ADC shall be required to report to the State Employment Service initially and on a semi-monthly basis for manpower services, certification and check delivery.

(c) Each recipient of ADC or HR who is satisfactorily participating in an approved program of vocational training or rehabilitation shall be required to report to the State Employment Service initially and on a semi-monthly basis for a

review of his progress in training, provision of necessary manpower services, certification and check delivery for a grantee.

(d) In the social services districts where a Work Incentive Program is operating under auspices of the State Employment Service, each employable recipient of ADC or ADC-U determined to be appropriate shall be referred thereto. Such referral to the Work Incentive Program shall take priority over other manpower services to be made available to such recipients. Such recipient is required to continue reporting to SES in accordance with subdivisions (b) and (c) above.

385.5 Determination of refusal to accept manpower services. (a) A person shall be deemed to have refused to accept manpower services as required and if an applicant, his application shall be denied, or if a recipient, his assistance shall be terminated if he, without good cause:

(1) as an applicant fails to report to SES and file with the social services official the proper certification that he has reported within the semi-monthly period prior to the application; or as a recipient, fails to obtain and file with the social services official the proper verification that he has reported on a semi-monthly basis for the manpower services and certification of SES;

(2) fails to report to SES for an interview with respect to employment or training when requested to do so by such office;

(3) fails to accept referral to employment or to report to such office the results of a referral;

(4) fails to accept employment or training;

(5) fails to report for employment or training;

(6) fails to continue in employment or training;

(7) voluntarily reduced his earning capacity;

(8) fails to accept referral to, report to or participate in work relief on a Public Work Project;

(9) as an unemployed employable recipient participating in an approved program of vocational training or rehabilitation, he fails to report to the SES semi-monthly.

(b) In determining whether a person has refused wilfully to accept employment, a social services official shall take into consideration the report of the State Employment Service, employment agency or prospective employer, the explanation provided by the applicant or recipient for not accepting the offer of employment and any other pertinent evidence.

(c) A person shall be deemed not to have refused wilfully to accept employment if evidence shows that:

(1) the job offer was not bonafide;

(2) the salary or wages was less than the minimum required by law, the conditions of employment were otherwise contrary to law, or the wages or compensation or hours or conditions of work offered are substantially less favorable to the applicant or recipient than those prevailing for similar work in locality;

(3) a strike, lock-out or other industrial controversy was in progress at the place in which employment was offered;

(4) the acceptance of such employment would either require the applicant or recipient to join a company union or resign from or refrain from joining any bonafide labor organization;

(5) the job would have been hazardous to the applicant or recipient's life or health, or there was an absence, if appropriate, of workmen's compensation;

(6) the place of employment was an unreasonable distance from the applicant or recipient's home;

(7) transportation by public carrier or by private means between the applicant or recipient's home and the place of employment was unavailable;

(8) child care plans were temporarily disrupted making it impossible for the applicant/recipient to report as required; or

(9) temporary and verified illness incapacitated the client.

385.6 Sanctions (a) A person who (1) voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance or a larger amount thereof, or (2) without good cause fails or refuses to undergo a necessary medical examination or treatment, or to accept referral to and participate in a vocational rehabilitation or training program, including the Work Incentive Program, or refuses to accept referral to and work in employment, including work relief, in which he is able to engage, shall be:

(i) disqualified from receiving assistance for 30 days thereafter and until such time as he is willing to comply with the requirements of this Part, except that

(ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his

earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.

(b) Any person who applies for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person.

385.7 Financial aid to persons to obtain occupational or vocational training or employment in another district (a) To enable a recipient to accept employment available in another social services district within the State in fulfillment of a plan for self-support, an allowance for the recipient's maintenance may be provided, if necessary, until the recipient receives earnings which will permit him to be self-supporting.

(b) A plan for relocation shall be approved only after verification of the employment opportunity and pertinent information obtained about the wage rate, date and amount of first pay, living conditions and the possibility of transportation being provided by the employer or as an advance on wages.

(c) Approval of the plan shall be based on proof of assured employment; the likelihood of the recipient and his family becoming self-maintaining in the new locality and other pertinent social factors. Data and documentary material supporting the decision shall be recorded

in the case history. The social services district in which the recipient is relocating shall be advised of the plan.

(d) Provision shall be made to move household furnishings to enable the recipient's family to rejoin him when his ability to support them has been determined and the recipient's earnings are not sufficient to meet such costs in accordance with the provisions governing purchase of services.

(e) An allowance for transportation and maintenance may be provided to enable a recipient to undergo occupational training in another social services district within the State for purposes of fulfilling a plan of self-support until such training is completed and the recipient has returned to the social services district. Such plan shall be verified and the decision shall be recorded in the case history. The social services district in which the recipient will undergo training shall be notified of the plan.

385.8 Literacy training program. (a) Establishment of the program. When a social services official determines that there is need in his district for a Literacy Training Program, he shall notify the appropriate education official(s) of the need for such a program.

(b) Eligibility requirements. A recipient shall be eligible to participate in such program if he is:

(1) 16 years of age or over;

(2) not attending school;

(3) below an eighth year level of education; and

(4) capable of benefiting from such literacy training program.

Exhibit G Attached to Answer.

(c) Referral of recipients for training. Forms, provided by the Department or an approved local equivalent, shall be used when making such referrals in accordance with Department instructions.

(d) Support and encouragement. Recipients participating in such programs as part of their employability plan shall receive financial and supportive services such as transportation and child care expenses necessary to enable them to continue regular attendance.

385.9 Work relief in public work projects. (a) Each social services official shall establish or may contract with State Industrial Commissioner for the establishment of a Public Work Project for employable HR recipients who are unable to secure employment in the regular economy.

(1) Such persons may be assigned to work for the State or any city, town or village requesting such assignment.

(b) Each social services offical shall develop a sufficient number and variety of Public Work Projects within its district to insure the availability of such a project for all of their unemployed employable Home Relief recipients within the district who have been unable to secure employment in the regular economy.

(c) Public Work Projects shall provide the following experiences for the recipient:

(1) Maintain or develop adequate work habits.

(2) Maintain or improve existing skills; or

(3) develop new skills.

(d) All Public Work Projects shall meet the following requirements:

(1) The work performed shall be useful.

(2) Persons assigned to such projects shall not be used to replace or to perform any work ordinarily and actually performed by regular employees of any department or other unit of government, or to replace or to perform any work which would oridnarily be performed by a craft or trade in private employment.

(3) Appropriate standards of health, safety and other work conditions shall be established and maintained to insure that participants are adequately protected against hazards or activities which may adversely affect their health.

(4) Participants shall be required to perform only those physical activities which are within their physical capabilities.

(5) Recipients shall be insured in accordance with the provisions of the Workmen's Compensation Law of the State of New York.

(6) Adequate time records shall be kept.

(7) There shall be no discrimination on the grounds of race, color or national origin.

(8) Where practical, the participant's work shall be so scheduled as to make time available for him to report to the State Employment Service and to look for employment, as well as necessary time to meet with the caseworker from the Social Services Department. Where such scheduling is not practical, a system of release time to accomplish these purposes shall be provided.

(e) The social services official shall:

Exhibit G Attached to Answer.

(1) Assign those recipients whom SES have been unable to place in the regular economy after 30 days from the date the recipient first received assistance;

(2) require the recipient to work the number of days as determined by the amount of the grant, provided he shall not be required to work for more than the number of days necessary to earn such an amount or to be paid more than such an amount, or to work more than 8 hours in a day, or more than 40 hours in one week, or the customary full work week of the employer, if less. Payment credits for work shall be made at the State minimum wage or at the wage paid to local government employees in the classified services for comparable work;

(3) monitor the participation of the individuals and take appropriate action when an individual fails to report to, or fails to continue to participate in such projects;

(4) provide a pre-placement physical whenever there is any reason to suspect a health problem or whenever an individual requests such an examination;

(5) provide transportation to meet the cost of transportation to a central point and provide necessary grants and allowances for lunches;

(6) insure that adequate child care is provided to children of mothers or other caretakers who are participating in the program. The cost of such child care shall be met as a "Purchase of Service";

(7) inform the appropriate SES office of the location and work component of each Public Work Project available in the social services district;

Exhibit G Attached to Answer.

(8) designate at least one staff person to act as coordinator/liaison for the program. Such person shall be responsible for recruitment of sponsors and in general for the program in the district.

(f) The social services official shall require the governmental unit operating the Public Work Project to:

(1) Submit to the local social services district (or to the Industrial Commissioner where contractual arrangement has been made) a description of the Public Work Projects which they are prepared to operate, including:

(i) the nature of work to be performed;

(ii) guarantees that the general requirements are met; and

(iii) agreement to provide necessary supervision and any additional equipment required by the project.

(2) Maintain and transmit time records which shall include:

(i) the name of the sponsoring agency;

(ii) participant's name, social security number, and social services case number;

(iii) the type of work performed;

(iv) the period covered by the time report;

(v) the exact time the participant was on the job; and

(vi) a prevailing rate per hour for the job.

(3) Give prompt notification of a participant's absence, except when such absence is on a pre-planned basis.

Exhibit G Attached to Answer.

(4) Provide transportation, when necessary, for recipients from a central point to the individual Public Work Project site.

(5) Require supervisors of such projects to report any illness or injury to the appropriate administrative office.

(6) Require medical verification of the participant's ability to work, in accordance with the same rules as apply to regular employees of the sponsor, when a participant is absent from the project because of illness or injury.

(7) Provide the social services district with periodic reports as to the individual's attendance, participation and attitudes, as may be required.

(8) Provide the tools and equipment needed by the participant.

(9) Provide participants with necessary items of special clothing required by the nature of the project; e. g., "hard hats, safety shoes, foul weather gear, etc."

385.10 Special account number. Each applicant or recipient 14 years of age and over shall be required to possess a Social Security Account Number.

385.11 Records and reports. Each social services official shall: (a) Maintain an inventory of HR and ADC recipients 16 years of age and over specifying the current employment and employability status of such recipient; in accordance with criteria contained in Section 385.1 of this Part.

(b) Maintain records and provide information and data regarding the ADC and HR caseload and individual recipients to the Department and State Employment

Notice of Argument of Motion to Intervene as a Defendant.

Service as determined by the Department to be necessary for the furtherance of the program.

Dated: July 30, 1971.

Signed: .....
ACTING COMMISSIONER

This is to certify that this is the original of an order of the State Department of Social Services, made on July 30, 1971, amending in part, Subchapter B of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR.

Dated: July 30, 1971

Signed: .....
ACTING COMMISSIONER

Notice of Argument of Motion to Intervene As a Defendant

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Sirs:

PLEASE TAKE NOTICE that the annexed motion for leave to intervene as a defendant in this action will be heard by Honorable John T. Curtin, United States District Judge, at the United States Court House, Buffalo, New York, on the

17th day of September, 1971, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard.

Also annexed hereto is a copy of the intervenor's proposed answer in this action.

Dated: September 2, 1971.

Yours, etc.,

LEONARD C. KOLDIN, ESQ.,
Onondaga County Welfare Attorney,
Attorney for Intervenor
John L. Lascaris,
Office and P. O. Address,
600 South State Street,
Syracuse, New York 13202.

Motion to Intervene As a Defendant.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, move the Court for leave to intervene as a defendant in this action and show to the Court as follows:

1. The Onondaga County Department of Social Services administers public assistance and care, including home relief, and aid for dependent children within the County of Onondaga, State of New York.

2. On August 12, 1971, the intervenor was served with a Temporary Restraining Order signed by Honorable John T. Curtin, United States District Court Judge, ordering that five named persons, who are not named plaintiffs in the caption of the action, receive certain relief and that the "defendants" are restrained and enjoined from taking certain action with respect to public assistance for these five named persons. True copies of the two temporary restraining orders are annexed hereto.

3. On August 13, 1971, the Commissioner of the State Department of Social Services, George K. Wyman, directed the intervenor herein to comply with the Court orders, which orders had not been directed to the intervenor, since the intervenor was not a party defendant to the action.

4. The intervenor has a direct and continuing interest in the determination as to the appropriate administration of the Social Services Law as it affects the five persons named in the temporary restraining order, and, further, as the issues in the action affect the more than 12,000 public assistance cases that are pending in the County of Onondaga.

Under the 1971 amendments to the Social Services Law which are under attack in this proceeding, 1,184 employable persons on public assistance in Onondaga County reported to the State Employment Office during the month of August for job referrals and to pick up their welfare checks. Some 243 persons designated as employable failed to report as required by law. Each of these cases was individually reviewed by this Department and as a result of this review, 111 welfare checks were cancelled, 82 welfare checks were released to recipients who had a valid reason for not appearing, such as illness, lack of understanding, reclassification as unemployable, and so on, and the balance

of 50 welfare checks is being held pending individual review of the cases involved.

5. Intervenor believes that it can make a significant contribution to the Court's determination of the facts and law applicable to this matter. Intervenor is the only agency having direct knowledge of the facts pertaining to the Onondaga County Welfare recipients which are apparently participating as unnamed plaintiffs in this action, and, furthermore, intervenor believes that it can submit arguments with respect to the basic issues of law and fact which would have a significant bearing upon the Court's ultimate determination of this action.

6. Intervention should be permitted under Rule 24 of the Rules of Civil Procedure, both as a matter of right and as a matter of discretion.

7. The intervention sought will not unduly delay or prejudice the adjudication of the rights of the original parties.

8. The defenses which intervenor desires to present are questions of law and of fact which are common to the main action.

LEONARD C. KOLDIN, ESQ.,
Onondaga County Welfare Attorney,
Applicant for Intervention,
Office & P. O. Address,
600 South State Street,
Syracuse, New York 13202.

Answer on Behalf of Intervenor, Onondaga County Department of Social Services and its Commissioner, John L. Lascaris.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Intervening defendant, Onondaga County Department of Social Services, and its Commissioner, John L. Lascaris, by their attorney, Leonard C. Koldin, Onondaga County Welfare Attorney, for their answer to the complaint herein:

1. ADMIT the allegations contained in paragraphs 11, 14, 15, 16, 17, 19, 21 and 22 of the complaint herein.

2. On information and belief, ADMIT the allegations contained in paragraphs 4, 5, 6, 7, 8, 24, 27, 29, 30 and 32 of the complaint herein. The source of their information and the grounds for their belief are affidavits of the plaintiffs submitted to the Court in support of an application for a Temporary Restraining Order.

3. DENY each and every allegation contained in paragraphs 36, 37, 38, 39, 40 and 41 of the complaint herein.

4. As to the allegations contained in paragraph 1 of the complaint herein, ADMIT those allegations are the stated purpose of the action and state the claims of the plaintiffs; but DENY any conclusions as to the validity of the claims contained therein which may be drawn from those allegations.

5. As to the allegations contained in paragraphs 2 and 3 of the complaint herein, ADMIT that the jurisdiction of the Court is invoked in this action as stated, but DENY any conclusions as to the validity of the claims therein stated which may be drawn from those allegations.

Answer on Behalf of Intervenor, Onondaga County Department of Social Services and Its Commissioner, John L. Lascaris.

6. As to the allegations contained in paragraph 9 of the complaint herein, ADMIT that the action is brought as stated, but DENY any conclusions as to the validity of the claims therein stated which may be drawn from the allegations contained therein and further DENY that plaintiffs may properly bring this action as a class action on the ground that questions of law and fact affecting only the individual plaintiffs predominate over questions of law or fact common to the whole class as stated.

7. As to the allegations contained in paragraph 10 of the complaint here, ADMIT the allegations thereof except allege that the New York State Department of Social Services is the sole final authority for the administration of the New York Work Rules.

8. As to the allegations contained in paragraph 12 of the complaint herein ADMIT the allegations thereof, except allege that the correct title of the Department is the New York State Department of Labor and that the New York State Employment Service is the agency charged with implementing a portion of the Work Rules, but is not a final enforcing or administering authority.

9. As to the allegations contained in paragraph 13 of the complaint herein, ADMIT the allegations thereof, except allege that defendant, Louis L. Levine is the Industrial Commissioner of the State of New York and is the chief executive officer of the New York State Department of Labor.

10. As to the allegations of paragraph 18 of the complaint herein, ADMIT the allegations thereof, except that the State Department of Social Services regulations are general

statewide regulations and do not refer specifically to the individual plaintiffs herein or apply solely to Erie County.

11. As to the allegations contained in paragraph 20 of the complaint herein, admit the allegations thereof, except allege that the flat grant provided under Social Services Law, § 131-a does not include housing, fuel, medical expenses or other specific types of expenses as provided in the regulations of the Department (18 NYCRR § 352.1), and further allege that the standard of need for a family of 6 is $329 per month (not $326), and further allege that transportation allowances have been provided by regulation for persons engaged in Public Works projects under the New York Work Rules and can be provided by Department regulation in other instances where need is shown, and further allege that the computation of basic needs does not include specific amounts for items such as transportation, but is computed from Federal figures establishing low income levels converted to New York State costs which figures include an annual allowance for transportation amounting to approximately $80 for a family of four.

12. As to the allegations contained in paragraph 23 of the complaint herein, ADMIT the allegations thereof, except allege that the provisions of Section 350-K are not being applied to ADC and ADC-U recipients and that only Home Relief recipients are being referred to public works projects, and further DENY that the statutes do not set standards for type of work provided or wages to be paid to recipients.

13. As to the allegations contained in paragraph 25 of the complaint herein, ADMIT the allegations thereof, except allege that the correct title of the Department is the Depart-

ment of Labor, and deny knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

14. As to the allegations contained in paragraph 26 of the complaint herein, ADMIT the allegations thereof on information and belief, except deny that plaintiff's appointment could not be scheduled so that she could make the trip to Buffalo in one day.

15. As to the allegations contained in paragraph 28 of the complaint, ADMIT the allegations thereof, on information and belief, except DENY knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

16. As to the allegations contained in paragraph 31 of the complaint herein, ADMIT the allegations thereof, on information and belief, except DENY knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

17. As to the allegations contained in paragraph 33 of the complaint herein, ADMIT the allegations thereof, on information and belief, except DENY knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

18. As to the allegations contained in paragraph 34 of the complaint herein, ADMIT the allegations thereof on information and belief, except DENY knowledge or information sufficient to form a belief as to plaintiff's subjective reactions.

19. As to the allegations contained in paragraph 35 of the complaint herein, DENY knowledge or information sufficient to form a belief as to the allegations contained

therein, except DENY that ADC or ADC-U recipients may be referred to public works projects under the Departmental regulations.

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

20. Prior to the enactment of Chapter 102 of the Laws of 1971, a copy of which is attached hereto as Exhibit A, Social Services Law, §131 required "employable" recipients of public assistance to report semi-monthly to the nearest office of the State Employment Service for referral. That section also contained an exemption from the definition of employable of persons unable to work by reason of age, health, or other disability. Chapter 102 amended that Section in two respects. First, it clearly defined the persons who would be deemed not to be employable, at those persons rendered unable to work by reason of illness, significant and substantial physical or mental incapacity, advanced age, full-time attendance at school in the case of a minor, full-time satisfactory participation in an approved program of vocational training or rehabilitation, or the need of such person to provide full-time care for other members of the household for whom care is otherwise not reasonably available. Thus, for the first time, the statute actually contained a definition and standard for determining which public assistance recipients were or were not employable. Contrary to the allegations of the plaintiffs, Chapter 102 established the first statutory standards for that determination and established standards which are on their face reasonable and fair.

Answer on Behalf of Intervenor, Onondaga County Department of Social Services and Its Commissioner, John L. Lascaris.

21. Secondly, Chapter 102 provided that "employable" public assistance recipients would, at the time of their reporting for job referral or employment counseling, have their assistance checks personally delivered to them. Not only would that system provide an accurate method of determining whether or not employable receipients were in fact reporting for job referral or counseling, but also would assure those recipients of the receipt of their checks on a day certain, without having to rely on the uncertainty of mail deliveries, but would also tend to alleviate some of the problem of check thefts. Recipients considered non-employable by reason of participation in a program of vocations training or rehabilitation are also required to report to the offices of the State Employment Service for job counseling and for evaluation of their progress in the training or rehabilitation programs. At the time of such reporting they are also to have their assistance checks delivered to them. Chapter 102 has been implemented by Administrative Letters Nos. 71 PWD-34, 71 PWD-43 and 71 PWD-52, copies of which are attached hereto as Exhibits B, C, and D. These letters establish reasonable, fair and adequate standards for the determination of employability and the procedures for referral of employables for job referral and services.

22. Chapter 101 of the Laws of 1971 (a copy of which is attached hereto as Exhibit E) amended Social Services Law § 164 to require each social services district to provide for the establishment of Public Works Projects for the assignment of employable persons receiving Home Relief. Such programs would be established either directly by the social services district or, by contract, by the State Industrial Com-

missioner. Public Works Projects established under the law must meet State and Federal requirements and are to be provided for the conservation of work skills and/or the development of new skills of recipients of aid. Persons assigned to such projects must be employable under the terms of Social Services Law, § 131, as amended, and provision must also be made to permit such persons to seek regular employment or to secure appropriate training or retraining where available. Chapter 101 has been implemented by Administrative Letter 71 PWD-48, a copy of which is attached hereto as Exhibit F.

23. Both Chapters 101 and 102 have been implemented by Departmental regulations filed with the Secretary of State of the State of New York on July 30, 1971, a copy of which is attached hereto as Exhibit G. The Administrative Letters and Departmental regulations provide definite, reasonable, adequate and fair standards for administration of the programs and accord to the plaintiffs and other recipients of assistance subject to those regulations due process of law.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, DEFENDANTS ALLEGE:

24. This Court should abstain from a determination of the issues raised in the complaint until plaintiffs have pursued administrative remedies available to them under State law. The complaint and the affidavits in support of the motion for a Temporary Restraining Order raise issues as to whether or not plaintiffs have been properly classified as employable and as to whether or not alleged hardships can not be alleviated by rescheduling of appointments or by

other administrative determinations. If plaintiffs' individual situations may be so resolved, then the constitutional issues need not be reached for a determination of the merits of plaintiffs' complaints.

WHEREFORE, defendants respectfully request that this Court enter a judgment dismissing the complaint herein and declaring Chapters 101 and 102 of the New York Laws of 1971 to be constitutional and valid.

Dated: August 31, 1971.

LEONARD C. KOLDIN, ESQ.,
Onondaga County Welfare Attorney,
Attorney for Intervening Defendants
Onondaga County Department of Social
Services and its Commissioner
John L. Lascaris,
Office & P. O. Address,
600 South State Street,
Syracuse, New York 13202.

EXHIBITS.

The Exhibits referred to in the answer are exactly the same as those Exhibits attached to the answer heretofore filed by the New York State Department of Social Services.

Order Temporary Restraining Order.

U. S. DISTRICT COURT

For the Western District of New York

(Title Omitted in Printing.)

This cause having come for a hearing on July 2, 1971, July 9, 1971, and July 16, 1971 on Plaintiffs' motion for a temporary restraining order and on the affidavit of Douglas Eldridge, the Court having heard the argument of counsel and being fully advised, it is

ORDERED, that the Plaintiffs' motion be granted as to John W. Cooper and that Defendants be restrained and enjoined, pending the termination of issues before this Court

(a) from requiring Plaintiffs to pick up their public assistance checks at office of the New York State Employment Service, and from any further enforcement against the named Plaintiffs of New York Social Service Law sections 131 (4), 164, and 350-K;

(b) from failing to issue immediately, to the named Plaintiffs, by mail, public assistance checks to which they would have been entitled on July 1, 1971, but for the requirements of section 131 (4) and 350-K of the New York Social Service Law, less the amount contained in any "interim check" mailed on July 1, 1971, and less the amount of any check issued to John W. Cooper by the State Employment Service office.

Dated: August 6, 1971.

/S/ JOHN T. CURTIN,
United States District Judge.

Order Temporary Restraining Order.

U. S. DISTRICT COURT

For the Western District of New York

(Title Omitted in Printing.)

This cause having come for a hearing on July 2, 1971, July 9, 1971, and July 16, 1971 on Plaintiffs' motion for a temporary restraining order and on the affidavits of John Edgar and Harriet Rose, the Court having heard the argument of counsel and being fully advised, it is

ORDERED, that the Plaintiffs' motion be granted as to Bertha Heath, Robert Allen, Stan Fleming, and James Moore, all of Onondaga County and that Defendants be restrained and enjoined, pending the termination of issues before this Court

(a) from requiring Plaintiffs to pick up their public assistance checks at office of the New York State Employment Service, and from any further enforcement against the named Plaintiffs of New York Social Service Law sections 131 (4), 164, and 350-K;

(b) from failing to issue immediately, to the named Plaintiffs, by mail, public assistance checks to which they would have been entitled on July 1, 1971, but for the requirements of section 131 (4) and 350-K of the New York Social Service Law, less the amount contained in any "interim check" mailed on July 1, 1971, and less the amount of any check issued to Bertha Heath, Robert Allen, Stan Fleming, and James Moore by the State Employment Service office.

Dated: August 8, 1971.

/S/ JOHN T. CURTIN,
United States District Judge.

Notice of Order Granting Leave to Intervene.

UNITED STATES DISTRICT COURT
Western District of New York

(Title Omitted in Printing.)

Sir:

Take notice of an ORDER, of which the within is a copy, duly granted in the within entitled action on the 24th day of September, 1971, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 28th day of September, 1971.

Dated: Buffalo, New York, September 28, 1971.

JOHN K. ADAMS,
Clerk U. S. District Court,
U. S. Courthouse,
Buffalo, New York 14202.

To:
Michael A. O'Connor,
Attorney for Plaintiff.

To:
Dennis R. Yeager,
Attorney for Plaintiff.

To:
Seymour Nathanson,
Attorney for Plaintiff-Levene.

To:
Virginia Schuler,
Attorney for Plaintiff-Betty Glenn.

To:
Jean M. Coon,
Attorney for Defendant—N. Y. S.

To:
Jason Karp,
Attorney for Pltf.—Beverly Stone.

FEDERAL RULES OF CIVIL PROCEDURE 77(d)

Order Granting Leave to Intervene.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

The Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, having moved this Court for leave to intervene as a defendant in this action, and the plaintiffs having moved for an order finding defendants New York State Department of Social Services, George K. Wyman and the Onondaga County Department of Social Services and John L. Lascaris, Onondaga County Commissioner of Social Services, in contempt of court, and for other related relief, and both motions having been heard by this Court on September 17, 1971, it is

ORDERED, that the motion for leave to intervene as a defendant be and the same hereby is granted in all respects; the caption of the action shall be deemed amended to show the Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, as defendants in the action; and the intervening defendants proposed answer to the complaint shall be deemed to be the answer on behalf of the intervening defendants and further service thereof upon the other parties shall not be required; and it is further

ORDERED, that the plaintiffs' motion to hold the said defendants and the Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, in contempt of court, and for other related relief, is in all respects denied as against the defendants, New York State Department of Social Services, George K. Wyman, and the Onondaga County Department of Social Services and its Commissioner, John L. Lascaris.

Dated: September 24th, 1971.

JOHN T. CURTIN,
United States District Judge.

Stipulations of Fact

In the
UNITED STATES DISTRICT COURT
for the Western District of New York

(Title Omitted In Printing.)

Now come the defendants by their attorneys, and the plaintiffs by their attorneys, and prior to the trial on this case agree and stipulate that Chapters 101, 102, and 298, §5 of the Laws of New York, 1971, N. Y. Dept. of Soc. Serv. Admin. Letters 71-PWD-34, 71-PWD-43, 71-PWD-48, 71-PWD-52, 71-PWD-54, 71-PWD-64, 71-PWD-75, N. Y. State Dept. of Soc. Serv. Bulletin Transmittal 71-MB-49, 18 N. Y. C. R. R. Part 385, 18 N. Y. C. R. R. Part 388, "Social Services in New York State . . . 1970" (104th Annual Report of the New York State Board of Social Welfare and the New York State Dept. of Social Services), 42 U. S. C. §602 (a) (19), and §§630-43, 45 C. F. R. §220.35, U. S. Department of Labor, Work Incentive Program Handbook, U. S. Department of Health, Education and Welfare "Guidelines . . . Work Incentive Program," a letter dated April 28, 1971 from HEW Regional Commissioner Elmer W. Smith to Defendant Wyman along with the interrogatories and the respective answers thereto, and along with all depositions in this case (to which it is stipulated that the answers by the parties and witnesses in said depositions are the same as the answers said parties would have given if they testified in open court), all of which are filed herein, are hereby offered into evidence by plaintiffs and defendants for all purposes and are hereby stipulated as evidence in this case. And further, the following stipulations are also made:

A. DEFINITIONS.

1. Home Relief ("HR") is a program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§157 *et sq.* for persons not covered by other programs of assistance in New York.

2. Veterans Assistance ("VA") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§168 *et seq.* and is part of the HR program.

3. Aid to Dependent Children ("ADC") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§343 *et seq.* New York is partially reimbursed for its expenditures under the ADC program by the United States government under the Federal program of Aid to Families with Dependent Children ("AFDC"), 42 U. S. C. §§601 *et seq.*

4. Aid to Dependent Children-Unemployed parent ("ADC-U") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§343 *et seq.* and specifically authorized by N. Y. Soc. Serv. L. §349 (B) (1-a). New York is partially reimbursed for its expenditures under the ADC-U program by the United States government under the Federal program of Aid to Families with Dependent Children-Unemployed Parent ("AFDC-U") established by 42 U. S. C. §607 *et seq.*

5. Old Age Assistance ("OAA") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§207 *et seq.* New York is partially reimbursed for its expenditures under the OAA program by the United States government under the Federal

program of Aid to the Aged, Blind or Disabled ("AABD") established by 42 U. S. C. §§1381 *et seq.*

6. Assistance to the Blind ("AB") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§282 *et seq.* New York is partially reimbursed for its expenditures under the AB program by the United States government under the Federal program of Aid to the Aged, Blind or Disabled established by 42 U. S. C. §§1381 *et seq.*

7. Aid to the Disabled ("AD") is the program of assistance grants administered by the State of New York pursuant to N. Y. Soc. Serv. L. §§300 *et seq.* New York is partially reimbursed for its expenditures under the AD program by the United States government under the Federal program of Aid to the Aged, Blind or Disabled, established by 42 U. S. C. §§1381 *et seq.*

8. "WIN" refers to the Federal compulsory work program established for AFDC and AFDC-U recipients by the Social Security Act.

9. "Public Assistance" refers to HR, VA, ADC, ADC-U, OAA, AB and AD.

10. "New York Work Rules" refers to the statutes and regulations at issue in this case: Chapters 101, 102 and 298 §5 of the Laws of New York, 1971, N. Y. Dept. of Soc. Serv. Admin. Letters 71 PWD-34, 71 PWD-43, 71 PWD-48, 71 PWD-52, 71 PWD-54, 71 PWD-64 and 71 PWD-75, N. Y. State Dept. of Soc. Serv. Bulletin Transmittal 71 MB-49, and 18 N. Y. C. R. R. Part 385.

11. Under the New York Work Rules "Unemployed employable" refers to any applicant for or recipient of Public Assistance who is not unemployable and not employed full time.

12. Under the New York Work Rules, "Unemployable" refers to an applicant for or recipient of Public Assistance between the ages of 16 and 64 not subject to the requirements and sanctions of the New York Work Rules by reason of illness, significant or substantial incapacitation either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advancéd age; full-time attendance at school in the case of a minor; full-time satisfactory participation in an approved program of vocational training or rehabilitation, specifically including participating in WIN; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the appropriate Social Services department to obtain others to provide such care.

13. Under the New York Work Rules, "Vocational trainee unemployable" refers to an applicant or recipient of Public Assistance who is unemployable by reason of his "full-time satisfactory participation in an approved program of vocational training or rehabilitation."

14. Under the New York Work Rules, "Employability notification" refers to the letter or other mode of communication by which a recipient of public assistance is notified of classification as an unemployed employable recipient.

15. "7 day notice" refers to the form letter required by 18 N. Y. C. R. R. 351.26 to be sent to recipients found to be ineligible for or eligible for less public assistance informing them they will be ineligible to receive public assistance or that their grants will be reduced seven days from the date of the notice.

16. "Pretermination hearing" refers to the review, with right to present evidence and cross-examine, to which a recipient of public assistance is entitled prior to any proposed termination, suspension or reduction of a public assistance grant. Such review is made by a local Social Services official in a position superior to the official who approved the proposed termination, suspension or reduction, and who did not participate in making the proposed determination under review.

17. "Fair hearing" refers to the hearing at which an applicant for or recipient of public assistance may appeal to the Commissioner of DSS and contest certain decisions or actions of social service officials, including, but not limited to, denial, termination, suspension, or reduction of a public assistance grant, denial of an application for or discontinuance of any service required under applicable statutes, rules or regulations, and a determination that an applicant or recipient must participate in a service program.

18. The terms "case record," "case file" and "case history" refer to the entire file and all records maintained by the local DSS for the recipient of Public Assistance to whom reference is made.

19. New York State Department of Labor "Form ES-28" is the basic form for communications from SES employees to Social Services employees, with regard to reporting manpower actions taken with regard to unemployed employables and vocational trainee unemployables.

20. "Recipient" refers to any person whose needs are taken into consideration in determining the amount of a Public Assistance grant.

21. "Applicant" refers to any person whose needs would be taken into consideration in determining the amount of a

Public Assistance grant if such a grant were made but which are not taken into account because such person, though seeking Public Assistance, has not yet been determined eligible for such assistance, or has been determined ineligible and is appealing such determination.

22. "Grantee" refers to a recipient of Public Assistance to whom a Public Assistance grant for said grantee, or for said grantee and other recipients, is paid by check drawn to his order by the local DSS.

23. "DSS" refers to the Defendant New York State Department of Social Services.

24. "DOL" refers to the Defendant New York State Department of Labor.

25. "SES" refers to the New York State Employment Service.

26. "Public Works Project" refers to a project created pursuant to N. Y. Soc. Serv. L § 350-k.

B. GENERAL

27. On March 28, 1971, Governor Rockefeller sent a Special Message (the "Special Message") to the New York State Legislature calling for the passage of certain measures related to Public Assistance in New York State. That message called for passage of the provisions of the New York Work Rules.

28. Pursuant to the Special Message, the State Legislature enacted, and on April 7, 1971, the Governor signed into law, Chapter 101 of the Laws of 1971 which amended N. Y. Soc. Serv. L. § 164, and created a new § 350-k requiring the establishment of public works projects to which unemployed

employables receiving HR (pursuant to §164) and ADC or ADC-U (pursuant to §350-k, if projects for such recipients meet state and federal requirements) can be referred.

29. Pursuant to the Special Message, the State Legislature enacted, and the Governor signed into law on April 7, 1971, Chapter 102 of the Laws of 1971, which amended N. Y. Soc. Serv. L. §131 (4) to define an unemployed employable, to require unemployed employable applicants to report to SES for certification as to the unavailability of employment, prior to eligibility, and to require unemployed employable recipients, as a condition of continued eligibility, to report to offices of SES twice monthly to receive their Public Assistance checks, and to accept referrals to private employment or to work on public works projects. In addition, Chapter 102 amended N. Y. Soc. Serv. L. §131 (4) to require those recipients deemed unemployable by virtue of their participation in an approved program of vocational rehabilitation or training to report to SES twice monthly for a review of their progress in training, and, if said recipients are grantees, to pick up their public assistance checks.

30. The State Legislature further enacted, and the Governor signed into law on May 24, 1971, Chapter 298 of the Laws of 1971 which, among other things, clarified Chapter 102 of the Laws of 1971.

C. PLAINTIFFS

31. DOLORES DUBLINO, one of the named plaintiffs in this action, resides in Buffalo with her three minor children ages 18, 14, and 13. Ms. Dublino and her family are recipients of public assistance in the AFDC category, and she was enrolled in a Work Incentive Program training program at the time the New York Work Rules were applied

to her. A temporary restraining order was issued July 6, 1971, restraining enforcement of the New York Work Rules against Ms. Dublino. But for the temporary restraining order now in effect, Ms. Dublino would be required, pursuant to the New York Work Rules to personally pick up her semi-monthly public assistance checks at the SES office in Buffalo, in addition to the obligations imposed on her by the Work Incentive Program.

32. DORIS JIMERSON, one of the named plaintiffs in this action, is an American Indian who resides with her three minor children, ages 16, 14, and 11 on the Cattaraugus Indian Reservation, located in Southwestern Erie County, New York. On July 6, 1971, a temporary restraining order was granted restraining enforcement of the New York Work Rules against Doris Jimerson. But for the temporary restraining order now in effect, Ms. Jimerson would be required to pick up her semi-monthly public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules.

33. JANIE LEE PHILLIPS, one of the named plaintiffs in this action, is 57 years old and resides alone in Buffalo. Ms. Phillips receives public assistance in the Home Relief category. On July 6, 1971, a temporary restraining order was issued restraining enforcement of the New York Work Rules against Ms. Phillips. But for the temporary restraining order now in effect, Ms. Phillips would be required to pick up her semi-monthly public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability. Ms. Phillips' right leg was amputated above the knee in an accident on a cotton plantation in Mississippi in 1965. Ms.

Phillips has not worked since that time and her prior work experience was limited to farm labor and housekeeping.

34. VIRGINIA MICHAEL, one of the named plaintiffs in this action, resides in Alden, New York, with her husband and her three minor children, ages 19, 18, and 16. At the time the New York Work Rules were implemented, Ms. Michael received public assistance in the ADC category for herself and her three minor children. Ms. Michael's husband is a recipient of public assistance in the OAA category. On July 6, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Michael. But for the temporary restraining order now in effect, Ms. Michael would be required to report in person at the SES office in Buffalo to pick up her semi-monthly public assistance checks and otherwise to comply with the New York Work Rules.

Alden, New York is located 22 miles east of Buffalo. The Michael family does not own a car and must rely on public transportation to travel to Buffalo. Bus fare is 70 cents one way and, because of bus schedules, a trip to Buffalo requires the better part of a full day.

35. MARIE MARFOGLIA, one of the named plaintiffs in this action, resides in Buffalo, New York with her six children, ages 16, 13, 12, 10, 8 and 4. She and her family receive public assistance in the ADC category. On July 6, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Marfoglia. But for the temporary restraining order now in effect, Ms. Marfoglia would be required to personally pick up her semi-monthly public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

36. OLLIE SWANSON, one of the members of the plaintiff class in this action, is a recipient of Home Relief and resides in Buffalo, New York. On July 26, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Swanson. But for the temporary restraining order, Ms. Swanson would be required to personally pick up her public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability. Ms. Swanson has complained of chronic leg ailments to caseworkers of the Erie County Department of Social Services, and she has stated that such ailments have prevented her from working for the past two years.

37. HENRIETTA HUNTER, one of the members of the plaintiff class in this action, resides in Buffalo with her three minor children who are all enrolled in high school. Ms. Hunter and her family are recipients of public assistance in the ADC category. On July 26, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Hunter. But for the temporary restraining order now in effect, Ms. Hunter would be required to personally pick up her public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

Ms. Hunter's case record, which is in the custody of the Erie County Department of Social Services, contains a form F319 with an attached note from the Edward J. Meyer Hospital signed by Dr. S. R. Michalski, M. D. Said note dated July 14, 1971 states that Ms. Hunter has tenosyrovitis of the left shoulder and left hand and also uterine bleeding

to excess and requires x-rays, lab tests and follow-up visits. Ms. Hunter was declared employable pursuant to the New York Work Rules and required to report to the SES office in the Ellicott Square Building to personally pick up her public assistance checks.

38. GLORIA McFARLAND, a member of the plaintiff class in this action, resides in Buffalo, New York, and receives public assistance in the ADC category for herself and her three minor children, ages 6, 4, and 1 year. Ms. McFarland is enrolled in a training program for dental assistants operated by the State University of New York Urban Center at Buffalo and sponsored by the Work Incentive Program. Ms. McFarland attends classes five days a week from 9 A. M. to 5 P. M. in this program, which will continue until June, 1972.

On August 3, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. McFarland. But for the temporary restraining order now in effect, Ms. McFarland would be required to pick up in person her semi-monthly public assistance checks at the SES office, 950 Broadway, Buffalo, New York, and otherwise to comply with the New York Work Rules.

39. JOHN W. COOPER, a member of the plaintiff class, resides in North Syracuse, New York, with his wife and three children, ages 5, 4, and 1 year. Mr. Cooper and his family receive public assistance in the ADC-U category. In July, 1971, when the New York Work Rules were implemented, Mr. Cooper was a full-time student at the Central New York Tractor and Trailer Driving School located in Liverpool, New York. Mr. Cooper attended classes from 8 A. M. to 4 P. M. Monday through Friday. Mr. Cooper received this training under the sponsorship of the Federal Work In-

centive Program. On August 6, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Cooper. Mr. Cooper completed his training course on or about August 31, 1971. But for temporary restraining order now in effect, Mr. Cooper would be required to personally pick up his public assistance checks at the SES office in Syracuse, New York and otherwise to comply with the New York Work Rules.

40. BERTHA HEATH, a member of the plaintiff class in this action, resides in Syracuse, New York. Ms. Heath receives public assistance in the HR category. Ms. Heath is 64 years old and suffers from diabetes, arthritis, and heart disease. On August 8, 1971, a temporary restraining order was granted enjoining the enforcement of the New York Work Rules against Ms. Heath. But for the temporary restraining order now in effect, Ms. Heath would be required to personally pick up her public assistance checks at the SES office in Syracuse, New York and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

41. STAN FLEMING, a member of the plaintiff class in this action, resides with his wife in Syracuse, New York. Mr. Fleming receives public assistance in the HR category. Mr. Fleming failed to report to an assignment on a public works project. His stated reason for not reporting was that he had been advised by an employee of the Onondaga County DSS that he could attend a job interview, and also that the nature of his work relief assignment had been improperly explained to him. Mr. Fleming's case was closed effective July 20, 1971; Mr. Fleming claims he received no notice of the proposed case closing. On August 8, 1971, a temporary restraining order was granted enjoining the enforcement of

the New York Work Rules against Mr. Fleming. But for the temporary restraining order now in effect, Mr. Fleming would have been ineligible for public assistance for 30 days after the termination of his public assistance grant.

42. JAMES MORE, a member of the plaintiff class in this action, resides in Syracuse, New York. Mr. More receives public assistance in the HR category. Mr. More was assigned to a public works project, and his public assistance was thereafter terminated for failure to comply with the New York Work Rules. Mr. More claims to be unemployable by reason of a mental disability, as found by the Syracuse Family Court. His stated reason for failure to comply with the New York Work Rules was his inability to understand and follow the complex requirements of said Rules. On August 8, 1971, a temporary restraining order was granted enjoining the enforcement of the New York Work Rules against Mr. Fleming. But for the temporary restraining order now in effect, Mr. More would be ineligible for 30 days, unless a local departmental review or a State fair hearing decision reversed the finding that benefits should be terminated.

43. ROBERT ALLEN, a member of the plaintiff class in this action, resides in Syracuse, New York and receives public assistance in the HR category for himself. Because of illness and the promise of a job in the regular economy, Mr. Allen did not report for a work relief assignment on three days. When he reported for his offered regular job, the offer was withdrawn because Mr. Allen had a police record (petty larceny). Mr. Allen then presented himself to the DSS and offered to cooperate with them, but the DSS terminated his aid and closed his case.

On August 8, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules

against Mr. Allen. But for the temporary restraining order now in effect, Mr. Allen would be ineligible for public assistance for 30 days.

44. THEODORE STURDEVANT and his wife, Rose, members of the plaintiff class in this action, reside in Olean, New York, with their five children, ages 10 through one and one-half years. Mr. Sturdevant receives public assistance for himself and his family in the HR category. In July, 1971, Mr. Sturdevant was declared an unemployed employable recipient and was required to personally pick up his public assistance check in Olean, New York. On August 12, 1971, Mr. Sturdevant was told to report to a public works project at the Olean City Garage, located in Olean, New York. Mr. Sturdevant did not report to the public works project. His stated reason was that, from his experience working there while unemployed in 1965, he would be assigned menial work and would be looked down upon by the regular employees.

On August 20, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Sturdevant. But for the temporary restraining order now in effect, Mr. Sturdevant would be subject to sanctions for failure to comply with the New York Work Rules.

45. HAROLD H. LEVENE, a member of the plaintiff class in this action, resides in Binghamton, New York, with his wife, and they are recipients of public assistance in the Home Relief category. On September 3, 1971, a temporary restraining order was granted restraining enforcement of the New York Work Rules against Mr. Levene.

On July 1, 1971, Mr. Levene picked up his first public assistance check at the SES office in Binghamton and at that time an SES office employee referred Mr. Levene to an em-

ployment interview for an office job at the Southern Tier Iron Works, which is in Conklin, New York, approximately three and one-half miles from Mr. Levene's home in Binghamton. Mr. Levene did not attend the scheduled interview because of lack of transportation available to him. The public bus company does not operate beyond the city limits, and Mr. Levene would have to travel by taxi (four to seven dollars round-trip) or walk or hitch-hike three and one-half miles from the City limits to the Iron Works for an employment interview; Mr. Levene does not own a car. The City of Binghamton Department of Social Services thereafter terminated public assistance for Mr. Levene by reason of his failure to comply with the requirements of the New York Work Rules. But for the temporary restraining order now in effect, Mr. Levene would have been ineligible for public assistance for 30 days after he failed to attend the job interview in Conklin, New York, unless a local departmental review or a State fair hearing decision reversed the finding that benefits should be terminated.

46. JOANNE SCOTT, a member of the plaintiff class in this action, resides with her six children, ages 13 through 7, in the Town of Pike, County of Wyoming, New York. Ms. Scott and her family are recipients of public assistance in the ADC category. In July, 1971, Ms. Scott was classified employable and notified that she was required to report semi-monthly to SES offices in Perry, New York. On or about August 25, 1971, Ms. Scott was referred for employment to the Champion Co. in Perry, New York. She stated at the interview that she could not accept work at that time due to the unavailability of child care and transportation. On or about August 31, 1971, Ms. Scott received a 7-day notice of termination for her failure to accept proferred employment. On September 22, 1971, a temporary restraining order was

granted enjoining enforcement of the New York Work Rules against Ms. Scott. But for the temporary restraining order now in effect, Ms. Scott would be subject to termination of public assistance for failure to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of non-compliance. Perry, New York, is located 14 miles from Ms. Scott's home in Pike, New York. Ms. Scott does not possess a driver's license and there is no public transportation in Wyoming County. Taxi fare is $14.00 per round trip.

47. CLARA BORNATIMER, a member of the plaintiff class in this action, resides in Pike, New York, with her six children, ages 10, 8, 5, and 4 (twins). Ms. Bornatimer and her family are recipients of public assistance in the ADC category. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Bornatimer. But for the temporary restraining order now in effect, Ms. Bornatimer would be required to pick up her public assistance checks in person at the SES office in Warsaw, New York and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability. Warsaw, New York, is located 22 miles from Ms. Bornatimer's home. Ms. Bornatimer does not own a car nor possess a driver's license, and there is no public transportation in Wyoming County, New York.

48. LINDA SARGENT, a member of the plaintiff class in this action, resides in Medina, County of Orleans, New York, with her three minor children, ages 2, 4 and 1 year. On September 29, 1971, a temporary restraining order was granted restraining enforcement of the New York Work Rules against Ms. Sargent. But for the temporary restraining order

now in effect, Ms. Sargent would be required to pick up in person her public assistance checks at the SES office in Albion, New York, and otherwise to comply with the New York Work Rules. Ms. Sargent is presently enrolled in classes at the Continental School of Beauty Culture, Ltd. located in Buffalo, New York, where she attends classes Monday through Friday from 9 A. M. to 4:45 P. M.

49. MUNIRA RAHIM, a member of the plaintiff class, is 53 years old and resides alone at 248 East Third Street, New York, New York. Ms. Rahim is a recipient of public assistance in the Home Relief category. On September 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Rahim. But for the temporary restraining order now in effect, Ms. Rahim would be required to pick up her public assistance checks at the SES office in New York and would be required to accept a referral to a public works project pursuant to the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

Ms. Rahim is being treated for a hiatus hernia condition which prevents her from working full time. When Ms. Rahim was asked to sign a form stating her willingness to participate in a public works project by working for the Department of Social Services, she added the words "when able" and signed the form. She was told that such an alteration was unacceptable, and when she refused to sign the statement without such qualification, Ms. Rahim was informed that her assistance grant would be terminated.

50. BEVERLY STONE is a member of the plaintiff class in this action residing in Albion, New York, with her eight children, ages 4 through 15 years. Ms. Stone and her family

receive public assistance in the ADC category. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Stone. But for the temporary restraining order now in effect, Ms. Stone would be required to personally pick up her public assistance checks at the SES office in Albion, New York, and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

Ms. Stone has been unable to obtain adequate day care services. Ms. Stone resides six miles from the SES office in Albion; she does not own a car; and there is no public transportation available in Orleans County.

51. MARK EAMES, a member of the plaintiff class in this action, resides in Olean, County of Cattaraugus, New York, with his wife and two children, ages seven and six. Mr. Eames and his family receive public assistance in the ADC-U category. On August 19, 1971, Mr. Eames was referred to a public works project at the Olean Garage, Olean, New York. He reported on August 20, but left when no one could give him any information about his assignment. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mark Eames. But for the temporary restraining order, Mr. Eames would be required to personally pick up his public assistance checks in Olean, New York, and to report to work in a public works project at the City of Olean Garage in Olean, New York, or be subject to termination of his public assistance grant.

52. LAWRENCE WAGONER and his wife, Marian, members of the plaintiff class in this action, reside in Salamanca, County of Cattaraugus, New York, with their

one minor child, age 16. Mr. and Mrs. Wagoner receive public assistance in the HR category. On September 22, 1971, a temporary restraining order was granted restraining enforcement of the New York Work Rules against Mr. and Mrs. Wagoner. But for the temporary restraining order now in effect, Mr. and Ms. Wagoner would be required to pick up their public assistance checks in person in Olean, New York, and otherwise to comply with the New York Work Rules.

The Wagoner family does not own a car, and public transportation to Olean from their home in Salamanca, New York, consists of one bus trip early in the morning and one returning in the evening.

53. RICHARD A. CHAMBERS, SR., a member of the plaintiff class in this action, resides in Olean, County of Cattaraugus, New York, with his wife and three children, ages 4, 3, and 13 months. Mr. Chambers receives public assistance in the HR category for himself and his family. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Chambers. But for the temporary restraining order not in effect, Mr. Chambers would be required to personally pick up his public assistance checks in Olean, New York, and to report to a public works project at the City of Olean Garage, to which he was referred on August 23, 1971.

At the time of his assignment to the public works project in Olean, New York, Mr. Chambers had arranged for his enrollment training as a tractor-trailer driver at the Masters Driving School in Niagara Falls, New York.

54. JAMES BARRETT, a member of the plaintiff class in this action, resides in Olean, County of Cattaraugus, New York, with his wife and two children ages 5 and 2. Mr.

Barrett receives public assistance for himself and his family in the HR category. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Barrett. Mr. Barrett was referred on August 11, 1971 to a public works project at the City of Olean Garage, located in Olean, New York. Mr. Barrett first reported to the public works project as required on August 13, 1971, and he and two welfare recipients were assigned to the task of pulling weeds from a fence on City property. Mr. Barrett worked eight hours on August 13, 1971, but did not report thereafter. His stated reason was that passers-by had recognized him and Mr. Barrett felt humiliated and embarrassed. But for the temporary restraining order now in effect, Mr. Barrett would be subject to termination of his public assistance grant in 30 days.

55. BETTY GLENN, a member of the plaintiff class in this action, resides in the Village of Mongaup Valley, County of Sullivan, New York, with her three minor children, ages 15, 14 and 11 years. Ms. Glenn and her family receive public assistance in the ADC category. On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Glenn. But for the temporary restraining order now in effect, Ms. Glenn would be required to personally pick up her public assistance checks at the SES office in Monticello, New York, and otherwise to comply with the New York Work Rules.

Ms. Glenn does not own an automobile and does not have the use of an automobile available to her. During the Spring, Winter and Fall months there is no buss service available between her home in Mongaup Valley and Monticello, and during that period the only available transportation is by taxi cab (six dollars round-trip fare) or hitch-hike.

56. BETTY SALLIS, a member of the plaintiff class in this action, resides in Buffalo, New York, and receives public assistance in the HR category. Ms. Sallis reported to the SES on August 13, 1971 to pick up her check and was told that no jobs were available. On or about August 20, 1971, Ms. Sallis's caseworker informed her that the SES had received a report that she had refused a job and that her aid would be terminated. Ms. Sallis continued to report to SES to pick up her checks. SES continued to refer her to jobs, none of which were available when she reported to the designated employers. On September 15, 1971, Ms. Sallis reported to SES and received no check, but she was still referred to a job opening which was not available when she reported for work. Because Ms. Sallis had received substantially less than her full public assistance entitlement since August 1, she was unable to pay her full rent for August and September. On September 17, 1971, Ms. Sallis was served with a summons in an eviction proceeding.

On September 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Sallis. But for the temporary restraining order now in effect, Ms. Sallis would be required to pick up in person her semi-monthly public assistance checks at the SES office and otherwise to comply with the New York Work Rules.

57. CHARLOTTE JIMERSON, a member of the plaintiff class in this action, resides on the Cattaraugus Indian Reservation with her six children, ages 20, 18, 16, 13, 10 and 8. Ms. Jimerson and her family receive public assistance from the ADC category. Ms. Jimerson resides more than 30 miles from Buffalo. In order to travel to Buffalo, Ms. Jimerson must pay a neighbor one dollar for a ride to Irving, New York, which is the nearest bus stop; she must then take a bus

into Buffalo at a cost of $3 round trip; and because of bus schedules, the trip takes an entire day, so she must buy lunch in Buffalo.

On September 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Jimerson. But for the temporary restraining order now in effect, Ms. Jimerson would be required to personally pick up her public assistance checks at the SES office in Buffalo and otherwise to comply with the New York Work Rules.

58. LAURA GILBERT, a member of the plaintiff class in this action, is a recipient of Home Relief residing along in Gowanda, County of Erie, New York. Ms. Gilbert does not own a car and in order to travel to Buffalo she must take a bus at a cost of $3 round trip. Ms. Gilbert objected to her classification as employable by reason of a history of emphysema and chronic leg pain. On September 9, 1971, a caseworker employed by the Erie County Department of Social Services sent Ms. Gilbert a "seven-day notice" requiring Ms. Gilbert to supply medical verification of her claim that she was not employable. For the past two years, Ms. Gilbert has been practicing the Christian Science Religion, which prohibits medical treatment. She did obtain a complete physical examination on or about September 15 and another on September 23, but was unable to obtain written verification within the required seven days. On September 29, 1971, the temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Gilbert. But for the temporary restraining order now in effect, Ms. Gilbert would be subject to sanctions for failure to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

59. DOROTHY LIVINGSTON, a member of the plaintiff class in this action, resides in the Village of Monticello, County of Sullivan, State of New York, with her two minor children ages 11 and 9 years. There is no publicly financed day care center in Monticello, and Ms. Livingston has tried without success to make satisfactory arrangements for babysitting. Starting October 7, 1971, Ms. Livingston was required to personally pick up her semi-monthly public assistance checks at the SES office in Monticello.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Livingston. But for the temporary restraining order now in effect, Ms. Livingston would be required to continue picking up her public assistance checks in person and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

60. LILLIE A. HARRIS, a member of the plaintiff class in this action, resides in Depew, County of Erie, New York, with her seven minor children, ages 15 through 5 years. Ms. Harris and her family receive public assistance in the ADC category. Ms. Harris is enrolled in an approved occupational training program at Erie County Community College in Williamsville, New York. On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Harris. But for the temporary restraining order now in effect, Ms. Harris would be required to personally pick up her public assistance checks at the SES office at Broadway and Fillmore in Buffalo, New York, and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing discussion reversed the finding of employability. Ms.

Harris states that no WIN counselor has ever discussed attendance or progress in training with Ms. Harris at the time she has picked up her public assistance checks.

61. DONNA BIELISKI, a member of the plaintiff class, resides in the Town of Medina, County of Orleans, New York, with her two children, ages two and three years. Ms. Bieliski receives public assistance in the ADC category. Ms. Bieliski attends classes five days a week from 9 A. M. to 4:45 P. M. at the Continental School of Beauth Culture, Ltd., located in Buffalo, New York, 45 miles west of Medina, New York.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Bieliski. But for the temporary restraining order now in effect, Ms. Bieliski would be required to personally pick up her public assistance checks in Albion, New York, located 11 miles east of Medina, New York.

62. NORMAN MICHAEL, a member of the plaintiff class in this action, resides in Alden, New York, with his mother and had been receiving public assistance in the ADC category until July, 1971; Norman Michael is 19 years old. In July, 1971 he was removed from ADC and told to apply for relief in the HR category. Mr. Michael accompanied an employee of the DSS to Buffalo, looking for employment; Mr. Michael was not informed of any further requirements. He received a letter dated September 1, 1971, denying his application for HR assistance for failure to present evidence of efforts to obtain employment. Mr. Michael lives 22 miles east of Buffalo and lacks transportation; Mr. Michael has applied for work at the Erie County Home and Infirmary, located one half mile from his home. The county refused to recognize any effect on Mr. Michael on a temporary

restraining order issued on July 6, 1971, on behalf of his mother Virginia Michael.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Norman Michael. But for the temporary restraining order now in effect, Norman Michael would be ineligible for public assistance, unless a local departmental review or State fair hearing decision reversed the finding of ineligibility.

63. Elvira Michael, a member of the plaintiff class in this action, resides in Alden, New York, with her mother and had been receiving public assistance in the ADC category until July, 1971. Elvira Michael is 18 years old. In July, 1971 she was removed from ADC and told to apply for relief in the HR category. Ms. Michael received a letter dated September 1, 1971 denying her application for HR assistance for failure to present evidence of efforts to obtain employment. Ms. Michael lives 22 miles east of Buffalo and lacks transportation. The County refused to recognize any effect on Ms. Michael of a temporary restraining order issued on July 6, 1971 on behalf of her mother Virginia Michael.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Elvira Michael. But for the temporary restraining order now in effect, Ms. Michael would be ineligible for public assistance unless a local departmental review or State fair hearing decision reversed the finding of ineligibility.

64. GEORGIA CASSEL, a member of the plaintiff class in this action, resides in Buffalo, New York, and receives public assistance in the ADC category for herself and her son, age 18. Her daughter, age 19, formerly received ADC but is currently self-supporting. Ms. Cassel suffers from a

chronic shoulder pain resulting from a pinched nerve. The DSS required her to submit a doctor's statement, which she was unable to obtain when her doctor discovered that the statement was requested by the Welfare department. The doctor also refused Ms. Cassel further treatment. Ms. Cassel then began treatment at the outpatient clinic of Buffalo General Hospital. Her assistance was terminated effective September 16, 1971; her Medicaid card thus expired and she was unable to purchase the medication prescribed by the clinic.

On October 13, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Cassel. But for the temporary restraining order now in effect, Ms. Cassel would be ineligible for public assistance and Medicaid assistance, unless a local departmental review or State fair hearing decision reversed the finding of ineligibility.

65. GLADYS TAYLOR, a member of the plaintiff class in this action, resides with her six minor children in Colonie, County of Albany, State of New York. Ms. Taylor and her family received Social Security benefits and supplemental public assistance in the ADC category. Ms. Taylor has been hospitalized several times in the past two years for a heart condition which has substantially limited her capacity to undertake gainful employment. Ms. Taylor is presently enrolled in the SEEK Program (Search for Higher Education) as a full-time student at the State University of New York at Albany (SUNYA).

When Ms. Taylor objected to her status as an "unemployed employable recipient," the Albany Department of Social Services directed Ms. Taylor to obtain medical verification of her medical ailments within seven days, by

letter dated July 29, 1971. Ms. Taylor is a former resident of Syracuse, New York and has received the better part of her medical treatment at St. Joseph's Hospital, located in Syracuse, New York. Ms. Taylor was unable to obtain an appointment with that hospital until September 20, 1971. On August 16, 1971, the Albany Department of Social Services terminated public assistance to Ms. Taylor because she has not yet obtained medical verification of her ailments.

On October 14, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Taylor. But for the temporary restraining order now in effect, Ms. Taylor would be ineligible for public assistance, unless a local departmental review or a State fair hearing decision reversed the finding that benefits should be terminated.

66. HAROLD LUCE and his wife, UNA LUCE, members of the plaintiff class in this action, reside in Olean, New York, and Ms. Luce receives Medicaid assistance. Mr. Luce is retired on a pension and receives no public assistance. Ms. Luce has mild phlebitis and cannot stand for more than ten minutes; for that reason she has to take a cab to the SES office to pick up her checks.

On October 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. and Ms. Luce. But for the temporary restraining order, Ms. Luce would be required to appear in person at the SES office in Olean and otherwise to comply with the New York Work Rules, unless a local departmental review or State fair hearing reversed the finding of employability.

67. MARY GOODMAN, a member of the plaintiff class in this action, resides in Olean, New York, and receives public assistance in the HR category. On or about July 27,

1971, Ms. Goodman was told verbally that she was "employable" and that she would have to pick up her check personally at the SES office. Ms. Goodman has been chronically ill since 1961; she is a diabetic, has ulcers, has had major surgery four times, has a skin allergy, bad eyesight, lack of balance, and is currently under treatment for psychological problems.

On October 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Goodman. But for the temporary restraining order now in effect, Ms. Goodman would be required to pick up in person her semi-monthly public assistance checks at the SES office and otherwise to comply with the New York Work Rules, unless a local departmental review or State fair hearing decision reversed the finding of employability.

68. WILLIAM MORGAN and his wife, LINDA MORGAN, members of the plaintiff class in this action, reside in Farmersville Station, New York, and receive public assistnace in the HR category. Mr. Morgan was unable to travel the 11 miles to the SES office in Olean in order to pick up his check because he does not have a car and there is inadequate public transportation in the country. Mr. Morgan's aid was terminated, his wife was made the grantee, and she was told to report to the SES office in Olean.

On October 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. and Ms. Morgan. But for the temporary restraining order now in effect, Mr. Morgan would be ineligible for aid for 30 days and Ms. Morgan would be required to pick up in person her semi-monthly public assistance checks at the SES office in Olean, New York, and otherwise to comply with the New York Work Rules.

69. PETER PLARRE, a member of the plaintiff class in this action, resides in Olean, New York, and receives public assistance in the ADC-U category for himself, his wife and their two minor children, ages 16 months and 1-1/2 months. Mr. Plarre is currently undergoing training in communications in a correspondence course conducted by the National Radio Institute; the cost of the training is being paid for by the Veterans Administration.

On October 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Plarre. But for the temporary restraining order now in effect, Mr. Plarre would be required to pick up in person his semi-monthly public assistance checks at the SES office and otherwise to comply with the New York Work Rules.

70. VALARIA CRAY, age 20 years, and her sister, LINDA CRAY, age 18, reside with an aunt, Ruby Jones, in Buffalo, New York. Both Valaria and Linda Cray receive public assistance in the Home Relief category and both are members of the plaintiff class in this action. Valaria and Linda Cray are both full-time students at the State University of New York in Buffalo.

On October 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Valaria Cray and Linda Cray. But for the temporary restraining order now in effect, Valaria and Linda Cray would be required to personally pick up their public assistance checks at the Ellicott Square Building in Buffalo, New York, and otherwise to comply with the New York Work Rules.

71. BEVERLY WALDRON, a member of the plaintiff class in this action, resides in the Town of Holland, County

of Erie, State of New York with her two minor children, ages 10 and 6 years. Beverly Waldron and her family receive public assistance in the ADC category. Ms. Waldron resides in a rural area approximately 20 miles from Buffalo; she does not possess a driver's license; and states that she cannot arrange adequate care for her two children.

On October 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Waldron. But for the temporary restraining order now in effect, Ms. Waldron would be required to personally pick up her public assistance checks at the SES office in Buffalo, New York, and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

72. HENRIETTA SMITH, a member of the plaintiff class, resides with her two children, ages 8 and 7 years, in Buffalo, New York. Ms. Smith and her family receive public assistance in the ADC category. Ms. Smith is presently a full-time student at the State University College at Buffalo, where she is in her junior year majoring in courses in mental retardation sponsored by the Department of Exceptional Education.

On October 21, 1971, Ms. Smith picked up her check at the SES office in the Ellicott Square Building in Buffalo, New York. The SES employee, a Mr. Goodman, referred Ms. Smith to a job opening as a "go-go-girl" at a night club in Buffalo. Ms. Smith refused to attend that job interview. Her stated reason was that she felt the job was morally objectionable and inappropriate under her present circumstances as a mother and full-time student.

On October 29, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Smith. But for the temporary restraining order now in effect, Ms. Smith would be subject to possible sanctions for failure to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision made a determination to the contrary.

73. ELLEN RIVENBURGH, a member of the plaintiff class in this action, resides with her two children, ages two years and twenty-one months, in Rensselaur, New York. Ms. Rivenburgh and her family receive public assistance in the ADC category. To date Ms. Rivenburgh has been unable to arrange day care services for her children. Ms. Rivenburgh has made objections to employees of the Rensselaer County Department of Social Services that her children are too young to leave with a stranger and there their infancy is complicated by emotional problems.

On November 5, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Rivenburgh. But for the temporary restraining order now in effect, Ms. Rivenburgh would be required to personally pick up her public assistance checks at the SES office in Rensselaer, New York, and otherwise to comply with the New York Work Rules, unless a local departmental review or a State fair hearing decision reversed the finding of employability.

74. FLORENCE McMAHON, a member of the plaintiff class in this action, resides in Holly, County of Orleans, State of New York, with her two minor children. Ms. McMahon receives public assistance in the ADC category. Ms. McMahon does not own a car nor have the use of a car available to her, and there is no public transportation in

Orleans County. On November 5, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. McMahon. But for the temporary restraining order now in effect, Ms. McMahon would be required to personally pick up her semi-monthly public assistance checks in Albion, New York, and otherwise to comply with the New York Work Rules.

75. BILLY WHITE and his wife, BETTY WHITE, members of the plaintiff class in this action, reside in Salamanca, New York, and receive public assistance in the ADC-U category for themselves and their minor child, age five months. Mr. White, who is a veteran of the Armed Forces, has applied for job training. He must travel 18 miles each way to pick up his assistance checks and has had to depend on a relative for transportation.

On November 5, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. and Ms. White. But for the temporary restraining order now in effect, Mr. White would be required to pick up in person his semi-monthly public assistance checks at the SES office in Olean, New York, and otherwise to comply with the New York Work Rules.

76. CLINTON BRACTION, JR., a member of the plaintiff class in this action, resides in Lackawanna, New York, with his parents and four siblings. Mr. Braction is 17 and is included in his father's HR budget. Mr. Braction was referred to a job opening by SES, but no job opening existed when he reported to the designated employer. In September, 1971, Mr. Braction informed his caseworker that he would be returning to school to earn a High School Equivalency Diploma. On September 20, 1971, Mr. Braction received notice that he was removed from his family grant effective

September 1, 1971. SES maintained that Mr. Braction had failed to keep an appointment scheduled for September 3, 1971. Mr. Braction offered to prove by producing his employment card, that he did not have notice of the appointment. Ms. Harriss, the Unit Supervisor responsible for Mr. Braction's case, has stated that he is employable despite his status as a full-time student and that he will thus not be eligible even after a 30-day waiting period.

On November 5, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Mr. Braction. But for the temporary restraining order now in effect, Mr. Braction would be ineligible for public assistance for at least 30 days.

77. DAVID MAROTT, a member of the plaintiff class in this action, resides in Troy, New York, and receives public assistance in the HR category. Mr. Marott reported to SES and indicated that the only limit on his accepting employment was that he "could not work on a job that hurt people or the environment." Mr. Marott was referred to a job opening, but there were no positions open on the day shift and Mr. Marott could not work the night shift, public transportation, on which he depended, not being available at night. Mr. Marott continued to report to SES but was not referred to any jobs. He did not receive his grant for September 14, 1971, and DSS informed him that the check had been mailed; Mr. Marott received a letter dated September 13, 1971, telling him to report for work relief on September 17, 1971. On September 17, 1971, Mr. Marott went to the DSS office to inquire about his grant and to report for work relief. At that time he was told by Mr. John Flynn, a Social Services employee, that his case was closed and that he should disregard the work relief letter. The reasons given by

Mr. Flynn to Mr. Marott for his termination were that SES had indicated to the local Department of Social Services that his appearance (he has long hair and a beard) prevented SES from referring him for employment and that his statement that he "could not work in a job that hurt people and the environment" made him unavailable for work.

Mr. Marott received a letter on September 20, 1971, indicating that he could have a review of his termination, to be conducted by Mr. Flynn, on September 23, 1971. Mr. Marott called Mr. Flynn, who told him that a review would not held, that the case was already closed and that the review had been held on September 17, 1971.

Mr. Marott requested a fair hearing, which was held on October 6, 1971. On October 29, 1971, the decision to terminate Mr. Marott was affirmed. Mr. Marott did not receive any public assistance while his fair hearing was pending.

78. ERNEST SHAFFER and his wife, PHYLLIS SHAFFER, members of the plaintiff class in this action, reside in Little Valley, New York, and Mr. Shaffer receives public assistance in the ADC-U category for himself, his wife and their six minor children, ranging in age from 12 to 3. Mr. Shaffer has a part-time job at which he earns $35 to $40 a week. He has been referred to a public works project in Salamanca. He has difficulty reaching Salamanca from his rural home, and work on the project would interfere with his part-time job.

On November 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York State Work Rules against Mr. and Ms. Shaffer. But for the temporary restraining order now in effect, Mr. Shaffer would be required to pick up in person his semi-monthly public assistance check at the SES office and to work on a public

works project, and Mr. and Ms. Shaffer would be required otherwise to comply with the New York Work Rules.

79. MARY COLEMAN, a member of the plaintiff class in this action, resides in Buffalo, New York, and receives public assistance for herself and her two children. Ms. Coleman is currently a full-time student at Buffalo State College under the "SEEK" program. Trips to pick up her checks and to participate on job interviews would interrupt her attendance at classes.

On November 24, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Coleman. But for the temporary restraining order now in effect, Ms. Coleman would be required to pick up in person her semi-monthly public assistance checks at the SES office and otherwise to comply with the New York Work Rules.

80. DOLORES TROY, a member of the plaintiff class in this action, resides in Buffalo, New York, and is an applicant for public assistance for herself and her two minor children, ages 7 and 6. Ms. Troy is a Licensed Practical Nurse and is currently enrolled as a full-time student at the Cooperative College Center of SUNYAB. She expects to graduate in May, 1972, with an Associate Degree and with qualifications to be licensed as a Registered Nurse. When she applied for public assistance in November, 1971, she was informed by the DSS that the requirements of the New York Work Rules apply to her even though she is a full-time student. The application of these rules could result in Ms. Troy being forced to discontinue her education.

On November 24, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Troy. But for the temporary restraining order

now in effect, Ms. Troy would be required to pick up in person her semi-monthly public assistance checks and otherwise to comply with the New York Work Rules.

81. ANNA CALLAHAN, a member of the plaintiff class in this action, resides in Suffern, New York, is 61 years old and was an applicant for public assistance. Ms. Callahan was employed by Letchworth Village, an institution for the retarded, until August, 1971. At that time she was forced to retire because of problems with her feet. Ms. Callahan had had trouble with her feet for four years and has been under the care of Dr. Stanley Leshen, a podiatrist, who was still attending her at the time of her several applications for public assistance. In September, Ms. Callahan applied for assistance at the Rockland County DSS. A representative of that agency told her that she would have to accept employment as a condition of eligibility. That representative then referred Ms. Callahan to Mr. Harold Strunk of Mahwah, New Jersey for work as a housekeeper; that referral was made without first referring Ms. Callahan to the New York SES. Mr. Strunk hired Ms. Callahan as a housekeeper for $50.00/week plus room and board. Ms. Callahan was to cook, clean and do laundry for Mr. Strunk and his three children; her hours were to be seven days a week, eight hours a day, ending each day at 6:00 P. M. Some time later, Mr. Strunk attempted to require Ms. Callahan to work as an evening babysitter also. On or about November 20, 1971, Ms. Callahan submitted a note from her doctor to the DSS indicating that she should not stand "too much;" she spend an average of six hours a day on her feet maintaining the Strunks' seven-room house. For the above reasons Ms. Callahan was forced to leave her employ at the Strunks'. She reapplied for public assistance and was told that she was ineligible for aid for 75 days due to her leaving the Strunks' employ.

On December 7, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Callahan. But for the temporary restraining order now in effect, Ms. Callahan would be ineligible for public assistance, unless a local departmental review or State fair hearing decision reversed the finding of ineligibility.

82. ROBIN GRAY, a member of the plaintiff class in this action, resides in Waterport, New York (Orleans County), and receives public assistance in the ADC category for herself and her three minor children, ages 2 years, 1 year and 3 months. Ms. Gray must travel ten miles each way to pick up her public assistance check; she does not own a car; she cannot afford cab fare; and there is no public transportation in Orleans County. Ms. Gray is willing to work part-time in the evening, but she has no day-time baby-sitter and transportation. On explaining the situation to the DSS and SES, she was told, "That's not our problem."

On December 14, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Gray. But for the temporary restraining order now in effect, Ms. Gray would be required to pick up in person her semi-monthly public assistance checks at the SES office in Albion and otherwise to comply with the New York Work Rules, unless a local departmental review or State fair hearing reversed the finding of employability.

83. CAROLE KAMPSHOFF, a member of the plaintiff class in this action, resides in Albion, New York (Orleans County), and receives public assistance in the ADC category for herself and her two minor children, ages 14 and 13. Ms. Kampshoff must travel three miles each way to pick up her assistance check, and she has been referred for work at a location eleven miles from her home. She does not own a

car, cannot afford to pay a cab fare for these trips and for a daily trip to work, and there is no public transportation in Orleans County.

On December 22, 1971, a temporary restraining order was granted enjoining enforcement of the New York Work Rules against Ms. Kampshoff. But for the temporary restraining order now in effect, Ms. Kampshoff would be required to pick up in person her semi-monthly public assistance checks at the SES office in Albion and otherwise to comply with the New York Work Rules.

D. DEFENDANTS

84. Defendant New York State Department of Social Services ("DSS") is the agency responsible for the administration of public assistance in the State of New York and is responsible together with the defendant New York State Department of Labor for the administration of the New York Work Rules. DSS is charged, under N. Y. Soc. Serv. L. § 20 (3) [a] with general supervision of the local departments of social services, including those appearing as defendants in this action.

85. Defendant George K. Wyman is the Commissioner of the New York State Department of Social Services and is responsible for the administration of the programs of that agency.

86. Defendant New York State Department of Labor ("DOL") is responsible, together with the defendant DSS, for the administration of the New York Work Rules. The New York State Employment Service ("SES") is a subdivision of DOL and is the agency charged with implementing and enforcing those portions of the New York Work Rules for which DOL is responsible.

87. Defendant Louis L. Levine is the Industrial Commissioner of the State of New York and is responsible for the administration of the programs of DOL.

88. Defendant Erie County Department of Social Services is the agency responsible for the administration of public assistance and the New York Work Rules in Erie County.

89. Defendant George G. Sipprell is the Commissioner of the Erie County Department of Social Services and is responsible for the administration of the programs of that agency.

90. Defendant-Intervenor Onondaga County Department of Social Services is the agency responsible for the administration of public assistance and the New York Work Rules in Onondaga County, New York.

91. Defendant-Intervenor John L. Lascaris is the Commissioner of the Onondaga County Department of Social Services and is responsible for the administration of the programs of that agency.

E. OPERATION OF THE NEW YORK WORK RULES

(1) Empolyment Service Referrals

92. DSS has interpreted the New York Work Rules to require the local departments to assume that all applicants for or recipients of HR, VA, ADC and ADC-U are unemployed employables, unless contrary information is available or less the contrary is shown.

93. Each applicant for public assistance who is deemed an unemployed employable is required to report to SES to obtain a certification required by 18 N. Y. C. R. R. § 385.4 as a condition of the granting of assistance. If assistance is

granted, said applicant is deemed an unemployed employable recipient.

94. Each recipient who has been determined to be an unemployed employable recipient receives an employability notification, requiring the recipient to report to an office of SES twice monthly and informing the recipient of the obligation to accept proferred employment as a condition of continued eligibility for public assistance. If said unemployed employable recipient is the grantee, the grantee is further informed that henceforth the public assistance checks will not be mailed but rather must be picked up at SES on the grantee's semi-monthly reporting date.

95. Each vocational trainee unemployable receives notification, requiring the trainee to report to an office of SES twice monthly, to review the trainee's progress in training. If said vocational trainee unemployable is a grantee, the grantee is further informed that henceforth the public assistance check will not be mailed but rather must be picked up at SES on the trainee's semi-monthly reporting date.

96. The semi-monthly reporting date assigned to each unemployed employable recipient, and to each vocational trainee unemployable, is based on the recipient's Social Security number or Case number, and reporting dates can be altered only when SES's review of the schedule indicates the need to revise the schedule for all recipients in accordance with New York State Employment Service Bureau Procedures Manual §§ 17091 (1), (5).

97. The assistance grant of unemployed employable recipients is calculated on the same basis as the assistance grant of "unemployable" recipients.

98. On the day on which an unemployed employable recipient grantee or vocational trainee unemployable grantee is required to report to SES, the check made out to that person is being held by SES.

99. If unemployed employable grantees and vocational trainee unemployable grantees do not appear at the scheduled date and time, their checks are held by SES through an additional day before being returned to the local Department of Social Services.

100. There is no requirement that unemployed employable grantees and vocational trainee unemployable grantees required to report to SES at a scheduled date and time be notified that they may obtain their checks at SES up to an additional day beyond the scheduled day.

101. If an unemployed employable grantee and vocational trainee unemployable grantee fails to pick up his check at SES within an additional day after his scheduled appointment, the check is automatically returned to the local Department of Social Services and a 7-day notice is issued to the recipient, in the absence of a change in circumstances brought to the attention of the Department.

102. When an unemployed employable recipient or applicant or vocational trainee unemployable reports to SES he is interviewed by an employee of SES.

103. Unemployed employable grantees and vocational trainee unemployable grantees are given their public assistance checks when they report to SES whether or not they cooperate with SES personnel.

104. Unemployed employable grantees and vocational trainee unemployable grantees are not specifically informed upon reporting to SES that they may obtain the check then

being held by SES whether or not they cooperate with SES personnel.

105. No funds have been appropriated by the State of New York under the New York Work Rules for training, transportation, child care, testing, or counseling or to reimburse expenses incurred by recipients and applicants in fulfilling their obligations under the New York Work Rules.

106. In July, 1971, the first month of operation of the New York Work Rules, according to statistics prepared by DSS, 48,609 persons were required to report to SES. Of this number, 14,035 were referred to jobs, and 1,127 were referred to training. Of the 14,035 persons referred to jobs, 1,861 were placed; of the 1,127 persons referred to training, 500 were placed.

107. In July, 1971, according to statistics prepared by DSS, 11,899 persons were considered by the local Departments of Social Services to have failed to comply with the requirements of the New York Work Rules. Of these, 8,108 persons failed to report to SES, while 3,791 persons were considered to have failed to accept, report for, or continue employment or training. The public assistance grants of 5,265 persons were terminated for non-compliance with the New York Work Rules.

108. In August, 1971, according to statistics prepared by DSS, 55,480 persons, consisting of 10,164 applicants and 45,316 recipients, were required to report to SES pursuant to the New York Work Rules. Of this number, 18,806 persons were referred to jobs and 1,316 were referred for training. Of the 18,806 persons referred for jobs, 3,405 were placed; of the 1,316 referred for training, 1,169 were placed.

109. In August, 1971, according to statistics prepared by DSS, 14,480 persons were considered by the local Depart-

ments of Social Services to have failed to comply with the requirements of the New York Work Rules. Of these, 9,236 persons failed to report to SES, while 5,144 persons were considered to have failed to accept, report for or continue employment or training. The public assistance grants of 4,379 persons were terminated for non-compliance with the New York Work Rules.

110. In September, 1971, according to statistics prepared by DSS, 55,598 persons were required to report to SES pursuant to the New York Work Rules. Of this number, 18,585 were referred to jobs, and 1,201 were referred for training. Of the 18,585 persons referred for jobs, 4,110 were placed; of the 1,201 referred for training, 287 were placed.

111. In September, 1971, according to statistics prepared by DSS 14,015 persons were considered by the local Department of Social Services to have failed to comply with the requirement of the New York Work Rules. Of these, 8,928 persons failed to report to SES, while 5,087 persons were considered to have failed to accept, report for or continue employment or training. The public assistance grants of 4,269 persons were terminated for non-compliance with the New York Work Rules. The cases of 2,756 applicants considered to have failed to comply were still pending, and the disposition of the cases of 1,466 persons in New York City who were considered to have failed to comply after reporting to SES is unknown.

112. According to statistics prepared by DSS for the period from July 1, 1971 to September 30, 1971, a total of 9,376 unemployed employable applicants or recipients were placed in jobs pursuant to the New York Work Rules.

113. According to statistics prepared by DOL and SEC, for the period from July 1, 1971 to September 30, 1971, 5,812

unemployed employable applicants or recipients were placed in jobs by SES. Of that number, the following numbers and percentages of unemployed employables (the total does not add to 100% because the percentages are rounded to the nearest 0.1%) were placed in jobs in each of the following "occupational categories and divisions":

	Individuals	%
"PROF TECH MGR"	86	1.5%
"CLERICAL"	657	11.5%
"SALES"	214	3.7%
"DOMESTIC"	309	5.3%
"OTHER SERVICES"	1,387	23.9%
"FARM F & F"	107	1.8%
"PROCESSING"	446	7.7%
"MACHINE TRADES"	326	5.6%
"BENCHWORK"	661	11.4%
"STRUCTURAL WORK"	450	7.7%
"MOTOR FRT TRANSP"	415	7.1%
"PKG MATERIALS HDLG"	714	12.3%
"OTHER"	40	0.7%
	5,812	100.2%

114. According to statistics prepared by DOL and SES, for the period from July 1, 1971 to September 30, 1971, a total of 32,253 individuals registered with SES were placed in jobs. Of these, 5,812 were unemployed employables and 26,441 were registered with SES independent of the New York Work Rules. Of the 26,441 persons who were not unemployed employable recipients or applicants, the following number and percentages (the total does not add to 100% because the percentages are rounded to the nearest

0.1%) were placed in jobs in each of the following "occupational categories and divisions:"

	Individuals	%
"PROF TECH MGR"	1,298	4.9%
"CLERICAL"	6,305	23.8%
"SALES"	976	3.8%
"DOMESTIC"	886	3.6%
"OTHER SERVICES"	4,510	17.1%
"FARM F & F"	396	1.5%
"PROCESSING"	853	3.2%
"MACHINE TRADES"	1,385	5.2%
"BENCHWORK"	3,840	14.5%
"STRUCTURAL WORK"	1,687	6.4%
"MOTOR FRT TRANSP"	1,200	4.5%
"PKG MATERIALS HDLG"	2,925	11.1%
"OTHER"	180	0.7%
	26,441	100.3%

115. As of January 1, 1971, according to the New York State Board of Social Welfare and the New York State Department of Social Services statistics, of the 1.8 million persons who had received public assistance the previous year, about 6% were considered employable, considering age, physical capabilities and circumstances in their households; of these, over half were employed—but with insufficient income to support their families; the remainder were totally unemployed and included many recipients who have never been employed as well as those who lack education, training or skill necessary to obtain employment currently.

116. The New York State Department of Social Services requires the local Department of Social Services to report monthly (a) the number of applicants and recipients required to report to SES and the number of applicants and recipients who failed to report to SES; (b) the number of persons referred to jobs or training and the number of persons placed; (c) the number of persons who failed to comply with the New York Work Rules; (d) the disposition of such non-compliance cases; and (e) the total net budget reduction achieved through the operation of the New York Work Rules.

117. DSS has not compiled, nor required local Departments of Social Services to report, the types of jobs and the wages paid on jobs to which recipients and applicants have been referred or placed by SES. DOL and its agent SES have compiled information as to the types of jobs in which recipients have been placed, but have not compiled information on referrals. Information as to wages paid to recipients and applicants who have been placed was not compiled by SES for the period from July 1, 1971 to November 1, 1971.

118. DSS, DOL and SES have not compiled information on recipients and applicants placed in jobs or training that would indicate the period of time such persons remain in such jobs or training. DSS does not collect information that would indicate the number of temporary jobs to which referrals are made.

2. GOOD CAUSE AND HEARING RIGHTS

119. A recipient or applicant does not have the right to a determination hearing or a fair hearing on the issue of em-

ployability prior to incurring the obligations of an unemployed employable recipient or a vocational trainee unemployable. A recipient classified as an unemployed employable or vocational trainee unemployable must comply with the New York Work Rules or be subject to grant termination or reduction; an unemployed employable applicant must comply with the New York Work Rules or be subject to grant denial. A recipient may contest the determination of employability at a pretermination hearing or fair hearing on grant termination or reduction for non-compliance with the requirements of the New York Work Rules. An applicant may contest the determination of employability at a fair hearing on the propriety of grant denial for non-compliance with the New York Work Rules.

120. Failure to comply with any requirement of the New York Work Rules subjects the recipient to the possibility of termination or reduction and the applicant to the possibility of denial of assistance for 30 days or until such person is willing to comply after 30 days, unless the non-compliance was with "good cause." Non-compliance with the New York Work Rules includes but is not limited to, failure to report to SES on the required semi-monthly reporting date, failure to report to SES or a prospective employer for an employment interview, failure to accept a referral for employment or training or failure to report to or participate in a public works project.

121. Termination of employment by an HR recipient without good cause constitutes failure to comply with the New York Work Rules, and subjects said recipients to termination of assistance for 75 days.

122. Neither lack of funds nor lack of adequate means of transportation at a reasonable cost constitutes good cause

for failure of recipients or applicants to appear at SES when otherwise required to do so pursuant to the New York Work Rules.

123. Lack of funds to meet the cost of keeping an appointment with a prospective employer for an interview, to which a recipient or applicant has been referred by SES pursuant to the New York Work Rules, does not constitute good cause under the New York Work Rules.

124. It is not good cause for refusing a referral to employment pursuant to the New York Work Rules that the skills or experience required by the job are either greater than or less than the skills and experience of the recipient or applicant.

125. Upon receipt of a report from a prospective or current employer that an unemployed employable recipient or applicant has failed to accept, report for, or continue in employment or training, or upon the determination by an SES employee that the recipient has failed in any way to comply with the requirements of the New York Work Rules, SES automatically refers such recipient's or applicant's case, via form ES28 to the local Department of Social Services, which may then issue a 7-day notice to the recipient.

126. The determination of "good cause" for a recipient's non-compliance with the requirements of the New York Work Rules is initially made by the local Department of Social Services, at a pretermination hearing; if assistance is terminated or reduced, a further determination on this issue may be made by DSS at a fair hearing.

F. WIN

127. The State of New York has adopted WIN, a program of compulsory work and training for ADC and ADC-U recipients which was established by the Social Security Act (See 42 U. S. C. §§ 602a(7) and (19) and 630 *et seq.*).

128. All "appropriate" recipients of ADC and ADC-U must be referred to WIN; Recipients of ADC and ADC-U, whether or not "appropriate" for WIN, may volunteer for WIN.

129. The local Department of Social Services determines which recipients of ADC or ADC-U are "appropriate" for referral to WIN, in accordance with procedures and guidelines contained in State and Federal statutes, regulations, and operational manuals.

131. Prior to his having to fulfill the requirements of the WIN program, a recipient of ADC or ADC-U determined "appropriate" for WIN has a right to a fair hearing by the Department of Social Services on the issue of his "appropriateness."

132. Once having been determined to be "appropriate" for referral to WIN, an ADC or ADC-U recipient is referred to the WIN program. Upon the recipient's enrollment in WIN, the Department of Labor is required to prepare an "employability plan" for the recipient, outlining the services and training necessary to achieving self-sufficiency. The recipient may be referred for employment, or to institutional or on-the-job training, in accordance with the employability plan.

133. Once enrolled in WIN, a recipient who refuses an assignment to employment or training is entitled to a hearing

by WIN personnel on whether such refusal is without good cause.

134. If a WIN enrollee is found to have refused employment or training without good cause, his participation in WIN is terminated. He may then be subject to termination of public assistance, but is entitled to a local pre-termination hearing and a State fair hearing on his termination from public assistance. The recipient is entitled to 60 days of counseling prior to the termination of benefits, during which the Department of Social Services continues to provide assistance to the recipient and the recipient's family.

135. As of June 30, 1971, of the 14,247 participants in the WIN program in New York State, 6951 or 48.8% were participants in Basic Education, Institutional Training, Regular on-the-job training, or other vocational training.

G. PUBLIC WORKS

136. Chapter 101 of the Laws of New York, 1971, amended N. Y. Soc. Serv. L. § 164 to require the creation of public works projects for recipients of HR in the State of New York.

137. Chapter 101 of the Laws of New York, 1971, created a new section, 350-k, of the New York Social Services Law, which required the creation of public work projects meeting state and federal requirements for recipients of ADC and ADC-U in the State of New York.

138. After consultation with the U. S. Department of Health, Education and Welfare, DSS decided not to promulgate regulations implementing N. Y. Soc. Serv. L. § 350-K.

139. The public works projects mandated by Chapter 101 of the Laws of New York, 1971, are projects in which unemployed employables engage in work for governmental agencies in return for their Public Assistance grants. Such work is performed for that number of hours each month which, when multiplied by the per hour credit assigned to such work, equals the amount of the monthly Public Assistance grant of the recipient and his family. An unemployed employable recipient participating in a public works project may not be compelled to work longer than the period required to earn the amount of the monthly Public Assistance grant. There is no authorization in the New York Work Rules for a monetary payment, in excess of the monthly public assistance grant, for participation in a public works project, other than payment for transportation expenses.

140. Under the New York Work Rules a local DSS has an option of either establishing and administering public works projects itself or contracting with DOL for the establishment or administration of such projects. To date, no such projects have been established and administered by DOL.

141. Referrals to public works projects established by a local DSS are made solely by the local DSS. An unemployed employable who has previously been required to report to SES pursuant to the New York Work Rules and for whom SES has been unable to secure employment or training, will be referred by SES back to the local DSS for subsequent referral to public works projects.

142. Many of the tasks performed by recipients assigned to public works projects would, in the absence of such recipients, ordinarily be performed by regular employees of the particular governmental agencies involved.

143. Participants in public works projects are not employees of the governmental agencies for which they are working, and are not entitled to union wages, fringe benefits, or retirement benefits.

144. It is not good cause for refusal to accept referral to a public works project or for leaving such a project that the recipient objects that

(a) The work to be performed is inconsistent with his or her work history, or

(b) The work to be performed is not genuine employment and limits the recipient's opportunity to look for permanent employment.

Date: 1/12/72. /s/ MICHAEL A. O'CONNOR,
Attorney for Plaintiffs.

Date: 1/12/72. /s/ DENNIS R. YEAGER,
Attorney for Plaintiffs.

LOUIS J. LEFKOWITZ,

Date: ..... By .....,
Attorney for Defendants,
New York State Department of Social Services, and George K. Wyman, New York State Department of Labor, and Louis L. Levene.

Date: ....,
Attorney for Defendants,
Erie County Department of Social Services and George G. Sipprell.

Date: ....,
Attorney for Defendant-Intervenors,
Onondaga County Department of Social Services and John L. Lascaris.

List of Exhibits.

In the

UNITED STATES DISTRICT COURT

For the Western District of New York

(Title Omitted in Printing.)

Attorneys for Plaintiffs and for the State Defendants have agreed to the submission of the following exhibits for consideration of the Court. Each exhibit is designated by a number. All of the exhibits are joint exhibits except the following: Exhibits 19, 25, 36, and 37 are Plaintiffs' Exhibits and Exhibits 43 and 44 are Defendants' Exhibits. Where the exhibit already has been placed in the record, a cross reference is made to the document in which it appears; where the exhibit has not appeared elsewhere, a copy is attached.

1. Chapter 101, N. Y. Laws of 1971 (copy attached).

2. Chapter 102, N. Y. Laws of 1971 (copy attached).

2A. Chapter 298, N. Y. Laws of 1971 (copy attached).

3. 18 N. Y. C. R. R. Part 385 (Exhibit 1, Answers of Defendants DSS and Wyman to Plaintiffs' First Interrogatories [Hereafter "DSS Answers to Interrogatories"]).

4. Bulletin 26, DSS Transmittal No. 71 MB 49 (Exhibit 11, DSS Answers to Interrogatories).

5. DSS Administrative Letter No. 71 PWD-34 (Exhibit 3, DSS Answers to Interrogatories).

6. DSS Administrative Letter No. 71 PWD-43 (Exhibit 4, DSS Answers to Interrogatories).

7. DSS Administrative Letter No. 71 PWD-48 (Exhibit 5, Answers to Interrogatories).

List of Exhibits.

8. DSS Administrative Letter No. 71 PWD-52 (Exhibit 6, DSS Answers to Interrogatories).

9. DSS Administrative Letter No. 71 PWD-54 (Exhibit 7, DSS Answers to Interrogatories).

9A. DSS Administrative Letter No. 71 PWD-64 (Exhibit 8, DSS Answers to Interrogatories).

10. DSS Administrative Letter No. 71 PWD-71 (copy attached).

11. DSS Administrative Letter No. 71 PWD-74 (Exhibit 9, DSS Answers to Interrogatories).

12. DSS Administrative Letter No. 71 PWD-75 (Exhibit 10, DSS Answers to Interrogatories).

13. DSS Administrative Letter No. 71 PWD-87 (copy attached).

14. DSS Administrative Letter No. 71 PWD-91 (copy attached).

15. DSS Administrative Letter No. 71 PWD-101 (copy attached).

16. Letter from U. S. Department of Health, Education & Welfare Regional Commissioner Elmer W. Smith to George K. Wyman, dated April 28, 1971 (Exhibit 2, DSS Answers to Interrogatories).

17. Letter from U. S. Department of Health, Education & Welfare Regional Commissioner Elmer W. Smith to George K. Wyman, dated April 21, 1971 (copy attached).

18. Letter of Ed Shannon, Albany County DSS (copy attached). (This letter was introduced as Exhibit O at the Deposition of Edward Phillips.)

19. New York Times Article, 8/26/71 (copy attached). (This article was introduced as Exhibit 3 at the Deposition of Jule K. Sugarman [hereafter "Dep. of Sugarman"].)

20. Albany County DSS Form 1775 (copy attached). (This form was introduced as Exhibit B at the Deposition of Mervyn Schwartz, Willie Mae Keaton and George J. Demmon [hereafter "Dep. of Schwartz, Keaton and Demmon"].)

21. Erie County DSS 7-Day Form Letter (copy attached). (This form was introduced as Exhibit A at the Deposition of Edwin L. Nowak and Janet Stroman [hereafter "Dep. of Nowak and Stroman"].)

22. Letter of K. L. Smith to Clifton Rice, 9/2/71 (copy attached). (This letter was introduced as Exhibit B, Dep. of Nowak and Stroman.)

23. Memorandum from William J. Magner, Erie County DSS, 8/20/71 (copy attached). (This letter was introduced as Exhibit D, Dep. of Nowak and Stroman.)

24. Memorandum from George G. Sipprell, Erie County DSS, 6/14/71 (copy attached). (This letter was introduced as Exhibit A, Dep. of Schwartz, Keaton and Demmon.)

25. Press Release, N. Y. City DSS, 6/14/71 (copy attached). (This release was introduced as Exhibit 4, Dep. of Sugarman.)

26. N. Y. SES Form ES 28 (copy attached).

27. Onondaga County DSS "Work Reform Policy and Procedures" (copy attached). (This document was introduced as Exhibit D at the Deposition of Phillip C. Pinsky [hereafter "Dep. of Pinsky].)

28. Onondaga County DSS Employability Notification Form Letter (copy attached). (This form letter was introduced as Exhibit E, Dep. of Pinsky.)

29. Onondaga County DSS 7-Day Form Letter (copy attached). (This form letter was introduced as Exhibit F, Dep. of Pinsky.)

30. Onondaga County DSS Reports of Employment Referrals (copies attached). (These reports were introduced as Exhibit G, Dep. of Pinsky.)

31. Onondaga County DSS Reports of Work Relief Referrals. (These records are attached as Exhibit G, Dep. of Pinsky.)

32. "Operations" Employment Service and Unemployment Insurance, June, 1971, Vol. 33, No. 6 (copy attached).

33. "Social Services In the State of New York, Social Service in New York . . . 1970" (104th Annual Report of the N. Y. State Board of Social Welfare and the N. Y. State DDS) (copy attached.)

34. "Employment Service Activities for Welfare Clients, New York State, 1968-70," N. Y. DOL Research Bulletin 1971, No. 2 (copy attached).

35. "Characteristics of AFDC Families in New York State, May, 1969," N. Y. State DSS Program Analysis Report No. 44 (Dec. 1970) (copy attached).

36. Community Council of Greater New York, Report I through IV on Operations of the New York Work Rules (copies attached).

37. Letter from Mary E. Switzer, H. E. W. Admin. to William H. Burson, Director Georgia State Department of Family and Children Services (copy attached).

List of Exhibits.

38. Governor's Message, 3/29/71 (copy attached).

39. New York State DSS Regulation 18 N. Y. C. R. R. § 385.5 as amended (copy attached).

40. Joint Reports Submitted to Governor of the State of New York, DSS and DOL (copies attached).

41. 1971 Amendments to WIN, Public Law 92-223 (a copy of these amendments as they appeared in the Congressional Record, Dec. 14, 1971 at S21641, is attached).

42. "Placements and Hourly Earnings, by Occupation, of Public Assistance Recipients Reporting to the Division of Employment Under Section 131.4 of the New York State Social Service Law," DOL Division of Employment, Research and Statistics, 12/15/71 (copy attached).

43. Report of the Sub-Committee on Welfare Reform, N. Y. State Temporary Commission to Revise the Social Service Law, January, 1972 (copy attached).

44. Excerpts of remarks by George K. Wyman, January 20, 1972 (copy attached).

45. U. S. Department of Health, Education & Welfare, "Guidelines, . . . Work Incentive Program" (copy attached).

46. U. S. Department of Labor, "Work Incentive Program Handbook" (copy attached).

Respectfully submitted,

Dated: February 18, 1972, New York, N. Y.

/s/ DENNIS R. YEAGER,
Attorney for Plaintiffs,
401 West 117th Street,
New York, N. Y. 10027,
(212) 280-4112.

Letter Objecting to Certain Exhibits.

(Seal)

COUNTY OF ONONDAGA

Department of Social Services

County Office Building
Syracuse, N. Y. 13202

January 31, 1972

John L. Lascaris
Commissioner

Mayer Freed, Esq.
National Employment Law Project
401 West 117th Street
New York, New York 10027

Re: Dublino vs. Wyman, et al.

Dear Mr. Freed:

We have reviewed your list of proposed exhibits dated January 17, 1972. We understand that the attorney general's office will propose to add at least two additional exhibits. Apart from these additions, we have the following objections to your list:

We will object to the admission of the New York Times article and of all reports by the Community Council of Greater New York and of the letter from the HEW employee to the State of Georgia.

In short, documents not constituting statistics or statements by New York State agencies or local welfare agencies within the State of New York will be objected to by us.

Exhibit 2A.

Please be further informed that we will also object to any reference in your brief or otherwise to affidavits submitted by you on applications for temporary injunctions. Those affidavits are not depositions on which cross examination was available and we do not believe that they are admissible under the Federal Rules of Civil Procedure. Those affidavits are not referred to in the Stipulations of Fact and we would never have agreed to incorporate those affidavits in any stipulation. We assumed that you included in your proposed stipulation any facts regarding individual members of the plaintiff class which you determined relevant or material.

Very truly yours,

LEGAL DIVISION,
Leonard C. Koldin,
Leonard C. Koldin,
Chief Welfare Attorney.

LCK/ac

CC: Jean Coon, Esq.
Mario C. Gambacorta, Esq.
Michael O'Connor, Esq.

Exhibit 2A.

Laws of New York.—By Authority

CHAPTER 298

AN ACT to amend the social services law, in relation to clarifying provisions relating to public assistance and medical assistance; and use of sub-professionaf staff by local social services districts

Exhibit 2A.

Became a law May 24, 1971, with the approval of the Governor. Passed by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision three of section three hundred sixty-five-a of the social services law, as added by chapter one hundred thirty-one of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

3. Notwithstanding the provisions of subdivision two of this section, medical assistance rendered to eligible persons who are not receiving or eligible for public assistance or care under the provision of any other title of this chapter, shall be limited to services of qualified physicians and such care and services as specified in paragraphs (b), (c), (*d*), [and] (h) *and* (*i*) in subdivision two above.

§ 2. Such law is hereby amended by adding thereto a new section, to be section ninety-six, to read as follows:

§ 96. *Use of subprofessional staff. Any inconsistent provision of law, general, special or local notwithstanding, a local social services district shall provide for the training and use of subprofessional staff, with particular emphasis on the use of public assistance recipients in accordance with state and federal requirements.*

§ 3. Section one hundred thirty-one-a of such law, as amended by chapter one hundred thirty-three of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

§ 131-a. Monthly grants and allowances of public assistance. 1. Any inconsistent provision of this chapter or other law notwithstanding, social services officials shall, in

Exhibit 2A.

accordance with the provisions of this section and the rules and regulations of the department, provide home relief, veteran assistance, old age assistance, assistance to blind, aid to the disabled and aid to dependent children, to needy persons who constitute or are members of a family household, who are determined to be eligible in accordance with standards of need established in subdivision two [except as otherwise provided]. Provision for such persons, for all items of need, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall be made in accordance with the provisions of this section. Such provision shall be made in monthly or semi-monthly allowances and grants within the limits of the schedules included in subdivision three of this section except for additional amounts which shall be included therein for shelter, fuel for heating, additional cost of meals for persons who are unable to prepare meals at home and for other items for which specific provision is otherwise made in article five of this chapter. 2. The following schedule shall be the standard of *monthly* need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
$84	$134	$179	$231	$284	$329

For each additional needy person in the household there shall be added an additional amount of forty-five dollars monthly.

Explanation—Matter in *italics* is new; matter in brackets [] is old law to be omitted.

Exhibit 2A.

In addition to the above, the standard of need shall include amounts for shelter and fuel for heating, amounts for additional cost of meals for persons who are unable to prepare meals at home and amounts for other items when required by individual case circumstances for which specific provision is otherwise made in article five of this chapter.

3. Persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two *less any available income or resources which are not required to be disregarded by other provisions of this chapter,* shall receive maximum monthly grants and allowances in all social services districts in accordance with the following schedules: (a) in all social services districts, for old age assistance, assistance to the blind, and aid to the disabled:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
$84	$134	$179	$231	$284	$329

For each additional eligible needy person in the household there shall be an additional allowance of forty-five dollars monthly.

(b) in all social services districts, for home relief, including veteran assistance, and aid to dependent children:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
$76	$121	$161	$208	$256	$296

For each additional eligible needy person in the household there shall be an additional allowance of forty-one dollars monthly.

4. If federal requirements make it necessary to adjust any schedule of grants and allowances, or part thereof, the department shall made such adjustments but the adjusted schedule of grants and allowances shall not exceed the [maximums provided] *schedule of monthly amounts* in subdivision two above.

5. In order that the legislature may, from time to time, consider adjustments to reflect changes in the cost of living, the department shall annually make an appropriate report to the governor and the legislature, which report shall include the recommendations of the department relating thereto.

6. Notwithstanding any other provisions of this chapter or other law, social services official may make provisions for the following items and services: (a) replacement of necessary furniture and clothing for persons in need of public assistance who have suffered the loss of such items as the result of fire, flood or other like catastrophe, provided provisions therefor cannot otherwise be made;

(b) purchase of necessary and essential furniture required for the establishment of a home for persons in need of public assistance, provided provision therefor cannot otherwise be made;

(c) essential repair of heating equipment, cooking stoves, and refrigerators used by persons in need of public assistance in their homes, provided provision therefor cannot otherwise be made;

(d) day care in a day care center, in a family home or approved "in home day care" provided the homemaker is employed, receiving occupational training, physically or mentally incapacitated, or in cases where family duties away from home necessitate her temporary absence, including

provision for Workmen's Compensation and other benefits as required by law when the "in home day care" is in the recipient's own home; homemaker service essential to meet social needs from an approved social agency provided such service is not available through the staff of the social services district; housekeeping services for a recipient who is unable to perform housekeeping tasks when not provided by the staff of the social services district, including provisions for Workmen's Compensation and other benefits as required by law when such service is purchased from an individual by the social services district; camp fees when funds cannot be obtained from other sources for children receiving aid to dependent children assistance not in excess of the total cost of ninety-six dollars per child for one-half of one percent of the total number of children receiving aid to dependent children assistance in the social services district; life insurance premiums provided the policy is assigned to the Department of Social Services, or in cases where the recipient is aged, his life expectancy is short, or he is deemed uninsurable.

§ 4. Subdivision three of section one hundred thirty-one of such law, as added by chapter five hundred seventeen of the laws of nineteen hundred seventy, is hereby amended to read as follows:

3. For needy persons who are members of a family household, the standard of need for determining their eligibility for public assistance shall be as prescribed by section one hundred thirty-one-a of this chapter and applicable federal requirements. For needy persons who are not members of a family household, the [The] department shall *continue to* determine [and establish] the [standards] *standard* of need for determining *their* eligibilty [of persons] for

public assistance pursuant to the provisions of this chapter and applicable federal requirements.

§ 5. Subdivision four of section one hundred thirty-one of such law, as last amended by chapter one hundred two of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

4. No assistance or care shall be given to an employable person who has not registered with the nearest local employment agency of the department of labor or has refused to accept employment in which he is able to engage.

A person shall be deemed to have refused to accept such employment if he:

a. fails to obtain and file with the social services district at least [once in every two-week period] *semi-monthly* a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

b. [wilfully] *willfully* fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

c. [wilfully] *willfully* fails to report to such office the result of a referral to employment, or

d. [wilfully] *willfully* fails to report for employment. Such [wilful] *willful* failures or refusal as above listed shall be reported immediately to the social services district by such employment office.

For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not

Exhibit 2A.

rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person *and the appropriate social services department* to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department.

§ 6. This act shall take effect immediately, except that section one shall take effect on the fifteenth day of May, nineteen hundred seventy-one, and section five shall take effect on the first day of July, nineteen hundred seventy-one.

Excerpts from Deposition of Herbert Simon and Nelson Hopper.

State of New York }
Department of State } *ss:*

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

JOHN P. LOMENZO,
Secretary of State.

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[4] **Excerpts from Deposition of Herbert Simon and Nelson Hopper.**

HERBERT SIMON and NELSON HOPPER, called as witnesses, having been first duly sworn, were examined and testified as follows:

Mr. Yeager: Would the two of you please state your names?

Mr. Simon: Herbert Simon.

Mr. Hopper: Nelson Hopper.

Mr. Yeager: And would you state your present occupation?

Mr. Simon: Director of Employment Security, Administrative Analysis, in the Division of Employment, New York State Labor Department.

Mr. Hopper: I am the Director of the Employment Service Bureau of the New York State Department of Labor, Division of Employment.

* * *

Excerpts from Deposition of Herbert Simon and Nelson Hopper.

[52] Mr. Yeager: We have mentioned the Work Incentive Program earlier. Is there a specific interview that is given to a person who has been referred to you for the Work Incentive Program comparable to the Employment Service interview that is given to other clients in the department?

Mr. Hopper: May I rephrase it to see whether we are saying the same thing? Are you asking whether a WIN enrollee receives the same interview that a 131.(4) might receive?

Mr. Yeager: Well, does he receive [53] the same interview?

Mr. Hopper: Yes.

Mr. Yeager: Does he receive an interview which goes beyond in any way the interview which is given to a person referred under Section 131.(4)?

Mr. Hopper: Generally yes.

Mr. Yeager: I believe there is a requirement that an employability plan be prepared for a person who is referred to the Work Incentive Program. Is there a specific interview in which the employability plan is developed by the WIN work?

Mr. Hopper: One or more, and at this point this is not done by the interviewer but this would be worked out by a higher-level professional counsellor.

Mr. Yeager: Is this employability plan worked out for the person referred to the State Employment Service pursuant to Section 131.(4)?

Mr. Hopper: No.

* * *

[62] Mr. Yeager: Returning again for a moment to a situation in which the box entitled "Applicant

Refused Job" had been checked, could this box be checked in a situation in which the applicant refused the job on the basis [63] that he was not qualified by prior experience to do that type of work?

Mr. Hopper: No.

Mr. Yeager: Would that be impossible?

Mr. Hopper: The employer may say he does not have sufficient experience or this type of a remark but, on the other hand, this—I would like to strike the earlier comment. I'm not sure. I want to take a different approach to the question. The employer reserves the right to determine whom he shall hire in all of these cases.

Mr. Yeager: Excuse me. I was referring to a situation in which the applicant indicated that he did not want the job because he was not prepared by his prior training and experience for that type of work. Would this box be checked in a situation like that?

Mr. Hopper: Yes, it could be.

Mr. Yeager: Is there a requirement that the State Employment Service employee refer clients referred to [64] you pursuant to Section 131.(4) only to those jobs for which they are qualified by their past experience and training?

Mr. Hopper: If I understand your question, the answer is no.

Mr. Yeager: Could a person be referred to a job which required less training and less experience than the training and experience which he had, had he been referred pursuant to Section 131.(4)?

Mr. Hopper: Yes.

Mr. Yeager: As to the general clientele of the

State Employment Service, is there a requirement that those persons be referred only to jobs for which they are qualified by training and experience?

Mr. Hopper: Yes, there is such a national and Federal requirement.

Mr. Yeager: Does the New York State Employment Service follow the national Federal requirement?

Mr. Hopper: Yes, we do. In [65] fact, I would like to say a Section 131.(4) client in relation to those available job openings would be given the benefit of his highest training and experience as factors.

Mr. Yeager: But for a non-Section 131.(4) client of the State Employment Service, would that person be referred only to jobs which approximate his level of skill?

Mr. Hopper: Suitable in relation to his experience, that's right.

Mr. Yeager: Does your department administer Unemployment Insurance as well as the State Employment Service?

Mr. Hopper: Our department does administer the Unemployment Insurance Law.

Mr. Yeager: Under the Unemployment Insurance Law, are the unemployment recipient's benefits terminated upon refusal to accept a job which did not require the level of skill and training which he had?

Mr. Hopper: You said Unemployment [66] Insurance claimant.

Mr. Yeager: Excuse me, Unemployment Insurance recipient.

Mr. Hopper: I don't care about "recipient" or

"claimant". I just want to be sure you mean what you say, that an Unemployment Insurance claimant would be referred to an opening on the basis of his experience—right.

Mr. Yeager: Except that what I am saying is would his benefits be terminated as a result of his refusal to accept a job for which he was more than qualified?

Mr. Hopper: That for which he was qualified, yes.

Mr. Yeager: We're not understanding one another. Could Unemployment Insurance benefits be terminated in the situation as a result of a recipient's refusal to accept a job which did not require as high a level of training and experience as he had? I'm talking about a substantial difference of some sort.

[67] Mr. Hopper: I must be sure, I'm not sure we are saying the same things. Are you restricting your question to an Unemployment Insurance claimant? You're talking about Unemployment Insurance the last time you said "recipient"? You don't mean a welfare recipient?

Mr. Yeager: I mean Unemployment Insurance.

Mr. Hopper: An Unemployment Insurance claimant or recipient would be referred to a job within the range of his experience and training. If he is a machine operator, he would be referred to a machine operator's job.

Mr. Yeager: Does the State Employment Service make a provision for those persons referred to the service pursuant to Section 131.(4) to obtain transportation when they're located at great distances from the State Employment Service office at which they must pick up their checks?

Excerpts from Deposition of Herbert Simon and Nelson Hopper.

Mr. Hopper: We would refer such [68] persons within any reasonable area of employment that is normal for the residents of the area.

Mr. Yeager: I'm sorry. What I am talking about is distance from the State Employment Service office to which he must go to pick up the check, that is the distance from his home to the State Employment Service office. Are there provisions for transportation allowances provided by the State Employment Service?

Mr. Hopper: No.

Mr. Yeager: Are there provisions for going out and picking up a person who lives at a great distance from the State Employment Service office and bring him in?

Mr. Hopper: No.

Mr. Yeager: Is there any provision made by the State Employment Service to meet the transportation needs of persons referred pursuant to Section 131.(4) who live at a distance from the State Employment Service office at [69] which they must pick up their checks?

Mr. Hopper: No.

Mr. Yeager: Is there any provision for Unemployment Insurance recipients serviced by the State Employment Service who live at a great distance from the State Employment Service to receive their checks by mail?

Mr. Hopper: All our recipients would receive their checks by mail.

Mr. Yaeager: Is there any provision for Unemployment Insurance recipients to report their con-

tinued availability for employment to the State Employment Service by mail?

Mr. Hopper: In some hardship cases.

Mr. Yeager: Has any effort been made to apply this system to persons referred to the State Employment Service pursuant to Section 131.(4)?

Mr. Hopper: Not at this time.

Mr. Yeager: Are there plans to examine that possibility at this time?

Mr. Hopper: No, because of the statute.

[70] Mr. Yeager: A person who is referred to the Work Incentive Program—would such a person be required to accept work which did not require the skills and training that that person had acquired?

Mr. Hopper: There would be some variables to that. Assuming a person completed his training plan and followed through on his job development plan, there would be efforts made to develop a job for him in relation to his training. This is one of the differences of the Work Incentive Program.

Mr. Yeager: Would there be any situation in which a person participating in the Work Incentive Program could be found to have refused to participate within the meaning of the Work Incentive Program guidelines and statutes as a result of his or her refusal to accept a job which did not require the level of skill or training for which that person may be proposed [71] for training in the Work Incentive Program.

Mr. Hopper: I don't think the question is basically applicable to the WIN Program. A person who would refuse a job in the WIN Program, the completion of

training, when he has had an occupational objective, his reasons for termination from that program would not have occurred at the job placement time but at an earlier date in this process. You see, they are in this program maybe for three months or six months or a year or longer.

Mr. Yeager: Let us take the person who has completed his training. For example, a person who is a refrigerator mechanic. Would this person be required to, under the penalty of being found to have refused to participate in the WIN Program, to accept a job which required skills less than the skills of a refrigerator mechanic?

[72] Mr. Hopper: I have trouble reconciling the question to the objectives of the program. Are you saying he did refuse a refrigerator mechanic opening?

Mr. Yeager: No, I'm saying he refused a job opening which, under the rules you would apply to Unemployment Insurance recipients, for instance, would be a job opening that did not meet the level of skill and experience of a job of which he would be capable of performing.

Mr. Hopper: Well, basically we expand tremendous effort to obtain employment for him in the occupation for which his training was accomplished or in related occupations.

Mr. Yeager: How many openings are there for Work Incentive Program participants in the State of New York at present?

Mr. Hopper: How many? Let's just define this.

Mr. Yeager: Well, I understand [73] there are slots called WIN slots. How many WIN slots are there in the State of New York at the present time?

Excerpts from Deposition of Herbert Simon and Nelson Hopper.

Mr. Hopper: There are 14,800. It has been increased to 16,000.

Mr. Yeager: Effective what date would that increase be?

Mr. Hopper: I'm not sure—April or May sometime.

Mr. Yeager: Are those WIN slots being fully utilized at the present time?

Mr. Hopper: They are all being fully utilized except the last 2,000 which require additional staff, staff training facilities, et cetera, before they can be accommodated, and additionally contracts have to be developed as the need arises for the training of these individual.

Mr. Yeager: Are there specific types of training that are now provided in the Work Incentive Program in the State of New York?

Mr. Hopper: It's open ended. You [74] are talking about skill training?

Mr. Yeager: Yes.

Mr. Hopper: Let me go back. It could be basic education. It could be studies of a second language. It could be studies in terms of prevocational training. It could be work-try-out type of a situation. It could be OJT, or it could be institutional training.

Mr. Yeager: What is OJT?

Mr. Hopper: On-the-job training.

Mr. Yeager: I'm sorry, I interrupted you.

Mr. Hopper: Within these categories there could be a substantial range of different occupations.

Mr. Yeager: Are there specific skill training openings in WIN? Are there training programs

designed to prepare a person for a specific occupation in WIN?

Mr. Hopper: Occupations and occupations.

Mr. Yeager: How many different [75] occupations are available through WIN?

Mr. Hopper: I don't know offhand.

Mr. Yeager: Could you estimate the number? I'm speaking of formal training positions.

Mr. Hopper: You are talking about skilled training slots?

Mr. Yeager: Yes.

Mr. Hopper: Offhand I don't know.

Mr. Yeager: Are there many people in the WIN Program at the present time who are on holding status in New York?

Mr. Hopper: Yes.

Mr. Yeager: How many are on holding status?

Mr. Hopper: Again I don't know.

Mr. Yeager: Is that information provided in the answers to interrogatories?

Mr. Hopper: No.

Mr. Yeager: This gray book to which you are referring—is that a public document of the Department of State Employment Service? Is that [76] a public publication?

Mr. Hopper: Yes.

Mr. Yeager: Could a copy of this be made available to the plaintiffs, Mrs. Coon?

Mrs. Coon: Yes.

Mr. Yeager: I seem to see frequent reference to it. The answers don't seem to be coming out of but at least we'll know.

Mr. Hopper: As of May 1971 there were 4,000 on holding status, 4,840 on holding status.

Mr. Yeager: Are you aware of any referrals to the State Employment Service of persons participating in the WIN Program? Are you aware of any referrals pursuant to Section 131,(4) to the State Employment Service of persons participating in the WIN Program?

Mr. Hopper: No.

Mr. Yeager: Are there any such referrals?

Mr. Hopper: They would be referred, as I indicated some time ago, as WIN referrals.

* * *

Excerpts from Deposition of Philip Pinsky.

[1] Examination of MR. PINSKY by Mr. Freed:

Q. Would you state your full name, please? A. Philip C. Pinsky.

Q. Could you tell us what position you hold with the Department of Social Services? A. I'm an Assistant Welfare Attorney employed by the Onondaga County Department of Social Services.

* * *

[32] Q. Now starting with the first exhibit, Exhibit E, the notification of considering the person an unemployed employable person, may I ask you Mr. Pinsky, whether the letter informs the recipient why he is being considered an unemployed employable person? A. No, except for the reason that there is a change, or there was a change in the Social Service Law.

* *

Q. Well is there anything in that letter which indicates to the recipient that he has a right to contest the finding of employability? [33] A. No.

Q. Does he, in fact, have the right to contest the finding of employability? A. If you mean a Fair Hearing, such requests have been raised; so I would have to say yes.

Q. Upon receipt of such a letter, could a recipient immediately demand a Fair Hearing as to this classification of his being employable? A. That is my understanding.

Q. If such a Fair Hearing was demanded, would the recipient be required to report to the Employment Service and accept referral to jobs? A. You mean pending the holding of the Fair Hearing, and pending the determination by the State Commissioner?

Q. Yes.? A. If the recipient requests a Fair Hearing and he does not give us any information indicating why he considered himself to be unemployable, then the answer would be yes. We would require him to comply with the terms of the letter, pending a Fair Hearing.

Q. Now have you conducted Fair Hearings—I believe you said you have? A. Many of them.

Q. In relation to something like this? A. Not many relating to this; no.

[34] Q. In general, have you conducted a Fair Hearing relating solely to the determination of employability, and not in addition to an issue as to non-compliance with the requirements of the Law? A. Yes—as a matter of fact, my recollection is that we have had a couple of cases in which there had been no discontinuance or reduction or closing of a case, but in which the employability issue had been raised. There might have been coupled with some other budget question, but not having to do with the employment field—but if you're asking about our own cases which we

have taken into consideration: whether or not we have cut these people off, I have a recollection that when a case was scheduled for a Fair Hearing, that before it actually went through—that is, before the Hearing was commenced—now, let me back up there, I just can't recall right now because we have had many, many Fair Hearings, but the answer to your earlier question whether we would require them to report to the State Employment Service under the letter, and your question was in regards to employability—if your question were would we cut off assistance to that person if he did not comply with the letter, pending the Fair Hearing, I think your question would imply that.

[38] Q. Is there any work Incentive Programs for Onondaga County? A. Absolutely.

Q. Now how many jobs are there in this program? [39] A. We have 400 slots assigned to us.

Q. Now you referred to slots? A. Slots—we have 400 slots assigned.

Q. Have you finished answering the question? A. We have 400 slots assigned. We have approximately 300 people in the WIN program at the present time in this county.

Q. You just said that there were 400 slots. Are you now stating that there are 400 slots and 300 people? A. That's what I said—400 slots and 300 people. We have room in there for more.

Q. Now have any recipients of ADC or ADCU been declared employable and referred to the New York State Employment Service, pursuant to the amendment to Section 131.4? A. I would imagine that there are some recipients of ADC, or ADCU, who have been declared employable. I wouldn't tell you that there are none.

Q. When a recipient of ADC or ADCU is declared em-

ployable, and referred to the New York State Employment Service, where does he go—where does he or she report? A. To the State Employment Service, to the address I gave you; 667 South Salina Street. This is the same building—within the same building where we are now. [40] Do you mean specifically where would they report?

Q. Yes? A. There is a separate office for the WIN office area in the building, and there is a place where the WIN participants go and they receive their Manpower training—I think it's at the terminal here—and then their checks would be issued. I am sure—now, I could be wrong—but the checks would come out of a different window, but it would all be in the same building.

Q. Well I'm not referring specifically to WIN participants. I'm asking about people who are recipients of ADC and ADCU, referred pursuant to Section 131.4—where would they go? A. They would go to the same place that the home relief recipients go.

Q. Now when a recipient of ADC or ADCU is referred to the State Employment Service, does he report to this same building? A. He does; yes.

Q. Now when a recipient of ADC or ADCU is referred to the Employment Service, is he provided with an employability plan when referred under Section 131.4? Are you familiar with the term employability plan? A. I can't answer that question by that terminology. [41] I use a lot of words that may or may not conflict with your terminology, but the program; if I had a different terminology, I could give you a better answer if you explained it a little more.

Q. Well, I don't know the section number but it is 380 point something, I believe, in reference to the WIN program. It provides that each participant in the WIN program shall have an employability plan prepared by WIN staff. Now, I'm

asking you whether an ADC or an ADCU recipient referred under Section 131.4 has an employability plan prepared for him? A. I can't honestly answer that because if that were done, it would be done by the Department of Labor and not by our agency; so I can't speak for what they would do.

Q. If such a recipient were referred to a job pursuant to Section 131.4 and refused such a referral to a job, would he be entitled to a Fair Hearing? A. If the facts entitled him to a Fair Hearing—I might add that any person who has a grievance with the Department of Labor is entitled to a hearing before a referee furnished by the Department of Labor, and I have been involved in those hearings, and if he is dissatisfied with that, then he is entitled to a second hearing before the Department of Social Services. Now in relation specifically, he can be entitled—and there is a second [42] hearing if he requests it, even though he loses the first hearing.

Q. Now are we talking about WIN, or are we talking about any person under HR or ADC who was referred under Section 131.4 and refused a referral from the State Employment Service? A. I'm referring to those from the WIN program.

Q. I'm referring to HR or ADC recipients who have been referred to the State Employment Services pursuant to Section 131.4, and there received a referral to a job and refused that job; would that person be entitled to a hearing because of that? A. Oh, absolutely.

Q. Who conducts that hearing? A. The Department of Social Services.

Q. Would there be a Labor Department hearing in that case? A. If there would be; I'm not aware of it.

Q. If such a person either in ADC or in HR is referred to the New York State Employment Services pursuant to Sec-

tion 131.4 and were found to have refused a job referral without good cause, would such a person be subjected to immediate termination of public assistance? A. I'm not sure I understand your question, but is [43] your question directed to what the procedure would be—that is, the procedure we follow with respect to the hearing of a person who is alleged to have refused a job without good cause?

Q. I'm saying if such a person has had a determination, or it has been determined in a Fair Hearing to have refused such a job without good cause, would that person be subject to immediate termination of beneifts? A. Again—and I'll not refer to WIN participants.

Q. Fine. A. Except for that, a person who as a result of a Fair Hearing is found to have her own case stop? Now as far as HR is concerned, the case would be closed for a period of time. If the person were head of the household, he would be deleted from case assistance but assistance would continue for the rest of the family.

Q. Well you just clarified your answer that this would be the case for either an ADC or home relief recipient referred pursuant to Section 131.4. A. Yes, there is a distinction between the two categories; ADC and HR. Under one scope of the section, in one case as I pointed out to you, the head of the household would lose the assistance but assistance would continue to the rest of the family.

[44] Q. In such a case would the recipient be entitled to a period of counseling prior to the effective day of any termination? A. Again, we're talking about a non-WIN case.

Q. Yes. A. In our county, the counseling comes in before the 7-day notice period. If that counseling has not been effective, there is no counseling done after the State renders a Fair Hearing decision.

* * *

[77] Excerpts from Deposition of George Demmon.

GEORGE DEMMON, 18 Glenside Court, Town of Tonawanda, New York, after being duly called and sworn, testified as follows:

Examination by Mr. O'Connor:

Q. Mr. Demmon, would you tell us, please, where you are presently employed and what is your position there? A. I'm employed by the Erie County Department of Social Services. My official title is Senior Employment Counsellor. My acting title is Acting Manpower Coordinator.

Q. How long have you been in these positions? A. I've been Senior Employment Counsellor for three years, and Acting Manpower Coordinator for three years.

* * *

[87] Q. What is your understanding of the nature of adequate child care and the requirement of diligent efforts? A. Well, first of all this is really not new with this—this stems back to 1968 when we established with the federal government and state government the work incentive program, and this is really taken out of Bulletin 93 which is established—has established the work incentive program. The basis of referring an ADC mother to the work incentive program—and, incidentally, if child care arrangements were available, this would be a mandatory work incentive program work referral. The basis for such referrals are discussions between the caseworker, the under care worker and the mother, first of all, as to the availability of child care, and the—let's say, the advantage of having the mother go into training and/or employment versus her staying home and taking care of the children, in other words, all these problems are considered, and the real criteria is whether the ADC mother, by going into training and work would strengthen the family situation or whether it would not. If it

would [88] weaken the family situation, then this would be an inappropriate referral. If such a referral—if child care plans were available, grandmother was there, who is adequate, day care center is there which is adequate, so on and so forth, if all this is available and this would strengthen the total family situation then the referral is an appropriate one, and this is not changed, as you recall, of this—

Q. It's your understanding that this definition or this exception to the definition is identical to the requirements of the work incentive program? A. Right.

Q. Which—I had a copy of those—

Mr. O'Connor: Is that policy reduced to writing, any memorandum issued by the Erie County Department of Social Services?

The Witness: What policy?

Mr. O'Connor: As to the appropriateness of day care?

The Witness: That, oh, Bulletin 93 in your interrogatories. Is that how you call it? We're attaching a Bulletin 93 to this, because it contains the full bulletin and contains—at least half of it is on guide lines for [89] referral, child care and so on and so forth.

Mr. Freed: Is there any reference made in any bulletin, Administrative Letter or other documents implementing the new New York State Work Requirements which makes reference to Bulletin 93?

The Witness: Except in our discussions with the case staff, we made this very clear, that what they were talking about here is exactly what they were talking about in Bulletin 93.

Mr. O'Connor: Seems, then, this is an agency policy rather than the policies formerly mandated by the Department of Social Services.

The Witness: No, I think this merely interprets what the federal government and the State Department of Social Services have come up with the work incentive program. This is merely a repeat, if you will.

By Mr. Freed:

Q. Okay. We're going to get the regulations, the federal regulations. I think we can—usually compare them, but I have a question. You said that a person who [90] could obtain child care under Bulletin 93, which you say is now comparable to this definition, would be appropriate for referral to the work incentive program if—in the definition of employable as set forth in the Bulletin 26 and this Administrative Letter includes every recipient of ADC who's appropriate for referral to the work incentive program—strike that. Strike that whole question. Does the definition of employable with regard to child care as set forth in Bulletin 26 and Administrative Letter 43, encompass every recipient of ADC who's appropriate for referral to the work incentive program? A. Yes. Our system is such that if an ADC mother is deemed appropriate because of child care and so on and so forth any other guide lines I've indicated, this is a mandatory referral to the work incentive program under the work reform rules. She is in compliance with these rules by this mandatory referral.

Q. Are you saying that every recipient of ADC who is appropriate for the work incentive program is referred to the work incentive program? A. Definitely.

Q. So that no recipient of ADC who has an adequate plan [91] of child care in Erie County would be referred to the State Employment Service under Bulletin 26 and Administrative Letter 43? A. No, I didn't say that. They would be referred to the State Employment Service. WIN office

and 950 Broadway even though they may not have been enrolled at this point. Let me give you a concrete example. An ADC mother is deemed appropriate. She now has an adequate child care plan, has been agreed upon by the under care worker, by the mother and no doubt approved by Child Welfare, we involve them, there are certain steps necessary to get her enrolled in the work incentive program. However, we then refer her to the SES WIN office, where she would pick up her semi-monthly check and be considered for employment opportunities even though she has not been enrolled in the WIN Program, because the enrollment procedure might take as much as a month.

Q. Would a person enrolled in the WIN Program but in a holding status because there is not a WIN training slot available be subject to referral for an employment opportunity? A. Absolutely.

[92] Q. Absolutely? A. The name of the game in WIN is employment, It may be—may require training in advance, but if there are employment opportunities, that's the main objective.

Q. I think maybe I can—I think maybe we've—I've not made my question clear. While the person is in a holding status, could he be referred to a job by the State Employment Service pursuant to— A. Absolutely.

Q. —these rules? A. While he's in a holding status and before—in holding status before he gets enrolled.

Q. A person who is in HR and receives a letter informing him he's an employable recipient and therefore must report to the—to the employment service and pick up the check and et cetera, does such a person have a right to contest that finding of employability at a hearing prior to reporting? A. Certainly.

Q. He does? A. Yes.

Excerpts from Deposition of George Demmon.

Q. What would be—how would that right be indicated? What would be the procedure? What would he do? [93] A. All he has to do is come in and contest the thing, and he is given a right to talk to his caseworkers, supervisors, and ask for a fair hearing.

Q. Prior to the—his having to report to pick up his check? A. The time—well, limits are such that you might have to pick up the first check and given every right to contest his definition of employability or any other actions taken by the caseworker.

Mr. O'Connor: Is there any procedure of informing recipients declared employable that they have a right to contest their new status?

The Witness: Oh, well, now I understand the question a little bit more. You're saying that if a caseworker declares a client employable, do we say, now, you can contest this sort of thing, no, if the client feels he's not employable and does contest it, then he's notified of his rights, but we don't issue any letters or statements or anything and say, now you're employable, and if you don't like this, do this, that or the other thing.

By Mr. Freed:

[94] Q. Is the right to that hearing on the issue of employability contained in any document put forth either by your department or the State Department? A. Yes.

Q. What document would that be? A. We have—first of all, State Department of Social Services as a Fair Hearing Procedures Bulletin which also we have included in your interrogatories.

Q. Interrogatories? A. We included that for your information. What we do now is—What we have done now is

this. If a client who has been declared employable goes to the State Employment Service, and he says to the interviewer or counselor, I have a bad back, I cannot work, this is reported on the ES-28 form which is the communication from the State Department of State Employment Services to us. Upon the receipt of this information, our medical division reports are examined resuming we find no medical reports on this client, we then issue him a seven day notice. This notice says to the client, you have said you were unemployable because of this, that or the other thing, you have seven days to bring to us, medical verification of this fact, you may also [95] have a hearing with a supervisor, and you also have the opportunity to ask for a fair hearing with the State Department of Social Services by writing to so-and-so, and so on and so forth.

RE-EXAMINATION by Mr. O'Connor:

Q. What happens at the end of the seven day time span if no medical verification is forthcoming? A. On the strictest interpretation of the regulation, and this is said in the letter, then his aid is stopped, if it's a single, or if it's a family member, the grant is reduced.

Q. You said strictest? A. Right.

Q. Is there room for discretion? A. Oh, yes, the guy says, well, I do have this verification, but it's coming from E. J. Meyer and can't get it out for another week, so, you know—

Q. Is there any written requirement that aid be continued if there's difficulty in obtaining medical verification? A. No.

Q. It could be in the discretion of the caseworker to [96] hold the client to the seven day limits? A. Right.

RE-EXAMINATION by Mr. Freed:

Q. You said the person would have the right to a fair

hearing, hearing on the issue of his or her employability? A. Yes.

Q. During the period in which that fair hearing process is progressing before the fair hearing, you said that—that it might be a possibility that the recipient would have to go down and pick up his check. Would he also have to accept an employment referral? A. Yes.

Q. Would he be subject to termination if that—if he refused to co-operate or accept that referral? A. If it eventually—it were considered without good cause, if it were eventually considered with good cause, no.

Q. I have in front of me, eighteen New York Code of Rules and Regulations, Section 388 point 7, entitled, "Right to a Hearing", and this section is in part [97] 388 entitled, "The Work Incentive Program", and I read from Section 388 point 7, "Right to a Hearing", parenthesis A. A. Excuse me, now. We're talking about work incentive—

Q. Right. A. Not work rules?

Q. "A Social Services official shall inform an ADC recipient in writing and orally whenever practicable of their right to a fair hearing by the department, and the method by which a fair hearing may be obtained when" —and then Sub-Section 2, "The person is agrieved because he has been determined appropriate for the referral to the work incentive program, and disagrees with such determination"—and the provision continues in parts which are not relevant to my question. You can refer to it, and the question I ask is whether the notification given to a recipient who has been declared appropriate under the work incentive program is the same as the notification to a recipient who is declared employable under the work— A. Essentially, yes. What you're reading there is if the client himself complains about the referral to the [98] work incentive program, and it

would be the same as a referral under work rules, under work reform.

Q. Now, pending the hearing for a recipient under the work incentive program— A. Nothing happens to the client.

Q. He does not have to accept referral? A. No.

Q. So, am I correct in assuming that this is the difference between the requirements of the work incentive program and the requirements of the work rules? A. Right.

Q. Now, my understanding of what you've said is that every person in ADC—well, now, let me—let me rephrase that. Drop—strike that. Could a person be declared employable pursuant to the New York Work Rules and be inappropriate for referral to the work incentive program, a recipient of ADC? A. An ADC mother.

Q. ADC person, ADC-U, or ADC under any exceptions? A. Under ADC-U, I'll take in parts. Under ADC-U, by the very definition, is a mandatory WIN referral, period.

Q. All right. A. And ADC mother, and this is strictly ADC, now, ADC [99] mother, is a mandatory WIN referral if she has appropriate child care and so on and so forth. Now, I don't think I answered your question. What was it again?

Q. Now, could a person be referred under the New York State Work Rule scheme and he be inappropriate for the referral to the incentive program? A. Absolutely not, no possible way.

Q. You have—and, you say that every—

Mr. Gambacorta: Excuse me, are you referring to ADC-U now?

By Mr. Freed:

Q. Both. A. The answer is the same for both.

Q. Now, well, are you aware—well, strike that, because

you wouldn't be aware. And, you are also telling me that no recipient of ADC or ADC-U in Erie County or anywhere else in the state should be referred pursuant to the New York Work Rules— A. No, I'm not saying that. First place, there are only ten projects in New York, WIN Projects in New York State. ~~God~~ That GJD eliminates every other county except ten.

Q. Okay. [100] A. I'm saying that any ADC or any ADC-U that is referred under work rules should be an automatic WIN referral. If it is not, it was a mistake on the part of the under care worker as to what office they referred the client to, not the referral.

Q. Now, but the—okay. Now, let's get to this office. Every referral of an ADC recipient under the work rules is to a WIN office, should be to a WIN office? A. Should be, yes.

Q. Is the procedure from then on a procedure pursuant to the provisions of the New York Work Rules, or a procedure pursuant to the provisions of a work incentive program? A. Both.

Q. Both? A. Both.

Q. Could you amplify that answer? A. Yes. I think I did before, but I will again. It's that you have—may have a mother who's deemed appropriate today for the work incentative program and therefore, the work rules together, okay. You want to get her—you make the referral. Okay. Now, she's going to pick up her next check at the WIN office. [101] Before she was enrolled in a program, she's required to have a physical which takes time for scheduling. She's required—or, I mean, a number of—an interview, number of papers have to be filled out and so on, indicating her interests, her background, her education, this, that and the other. In other words, information necessary for the

work incentive program. Once these papers are prepared, then they go to the work incentive office. Depending on their scheduling and so on and so forth—I indicated it could be as much as a month, perhaps five weeks before she was actually enrolled. She could be picking up two checks and referred to any service for employment before she's enrolled.

Q. She was referred to employment pursuant to the New York Work Rules prior to enrollment in the incentive program, could permanent employment— A. Sure.

Q. Then she would not be eligible for the training—for any training that she might undergo in the incentive program? A. No, the work incentive program, as I say, the name of the game is employment. People are referred to the [102] program who are job ready, no training needs to be involved, for—let me give you an example. You have a licensed practical nurse. She had to quit her job because she was pregnant. Okay. Child is now two years old, Gramma is going to stay with her son, and she's ready to go back into the labor market, she's referred to the WIN Program, no training is necessary, merely a question of getting her employment. so, first of all, employment is considered, is the client job ready. Okay. The client is not job ready. What does she need or he need? May need basic education, Puerto Rican father can't read or write, might start from the bottom all the way up, may need skill training, may be a situation where the client can go on OJT Program, On The Job Training. There's a myriad of possibilities, but the name of the game, again, is employment.

Q. If a person is referred for employment under—from the WIN office prior to enrollment in the work incentive program, or after enrollment, but on a holding status in the work incentive—let's take the first part, because I take it a

hold is a person who is not job ready? [103] A. Could be, or could be just the job hasn't been developed. In our economy today, it takes time.

Q. Did the WIN—the figure of fifteen thousand WIN slots for the—New York, does that mean training slots? A. Slots, period.

Q. That means everything? A. Right.

Q. So I take it there is always a significance—or, significant number of people on hold in the work incentive program, or is that not true? A. Depends on what you call significant. I think our—our total as of September 1st, was somewhere near thirteen hundred active cases and about three hundred and fifty on hold.

Q. Hold, okay. A. Whether that's significant, I don't know.

Q. If a person—let's take the first part and say a person who's job ready under the terms that you have just related, if the employment service referred that person to a job, and would that person refused to accept that job, the person be entitled the requisite GJD to a hearing on that issue, ~~the~~ good cause refusal, ~~the good cause~~ [104] recipient's refusal to accept the job? A. Certainly.

Q. Who would conduct that hearing? A. Well, first of all, the State Employment Service is involved at this point in the—in the WIN Program period?

Q. That's what I'm asking. A. Right.

Q. If a person, an ADC person is sent to the WIN office pursuant to the New York Work Rules and not enrolled in the— A. Not enrolled, the hearing would be conducted by DSS.

Q. So that a person appropriate for WIN by your definition would be given a hearing not by the State Employment Service as would be the case if he were enrolled in WIN? A. Correct.

Q. But, rather by the Department of Social Services? A. Correct.

Mr. Freed: Okay. I think that line is over.

* * *

[129] Q. If we could refer back to your previous discussion of the relationship between work incentive program and the new employability regulations, I believe you said that if a recipient was in either ADC or ADC-U, that recipient would be appropriate for referral to WIN and his or her referral under the procedure set forth in the Administrative Letter 43 and Bulletin 26 and the statutes would be to a WIN office and that that person would eventually be enrolled in work incentive programs, is that correct? A. Correct, should be.

Q. If a person in ADC is sent to the work incentive office of the State Employment Service and prior to his enrollment in the work incentive program is [130] referred to employment, to private employment and refuses without good cause as determined by the appropriate agency to accept that employment, what happens? A. He is given a seven day notice in which he was allowed to or is allowed to establish cause one way or another or good cause and notified that without good cause, his grant will be terminated, if a single person or a reduction in grant if it's a family person.

Q. Would have to be a family person if it's an ADC or ADC-U? A. Right, reduction in grant and also notified of his rights of a fair hearing.

Excerpts from Deposition of George Demmon.

Q. Now, I'm assuming that fair hearing proceeded and the fair hearing came out with a determination that there was no good cause then what would happen? A. Well, the situation would be unchanged. In other words, the—if the undercare worker establishes that there was no good cause, the grant would be reduced by the amount, then, if the fair hearing further established that—okay. If it contradicted that, of course, he would be put back in the grant retroactive.

Q. I see. If the person is in ADC is referred to the work [131] incentive office, is enrolled in the work incentive program but no slot is available and the person is on hold in the work incentive program, if the person is—if the person is further referred to a job, refuses without good cause to accept that job, what would happen? A. Then under Bulletin 93, which is the guide lines for the work incentive program, and I'm now—I'm guessing on the times, but I think they're permitted sixty days—sixty day period for counseling with this individual, the idea being to find out in terms of why he refused the job, explain to him what's going to happen if he does refuse the job, getting back into compliance, if possible. I think it's a sixty day period.

Q. All right. I take it from your answers to those two questions that the first hypothetical prior to enrollment in the incentive program but appropriate for referral that that individual would not be entitled to the sixty day period? A. That's right.

Q. And, would be terminated immediately? A. Correct, and I think that I might explain this further [132] by saying that the work incentive program is essentially a federal mandated program in which the rules are essentially set down by the federal government. The work reform program which we're talking about here is essentially not—essentially is a

State program in which the federal government is not involved.

Q. I have here a provision of what I understand is Bulletin 26, although it's not—it's in the form of an amendment to Part 385 of the NYCRR.

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[4] **Excerpts from Deposition of Edward Phillips.**

EDWARD PHILLIPS, called as a witness, having been first duly sworn, was examined and testified as follows:

By Mr. Yeager:

Q. Would you state your full name please? A. I am Edward Phillips, Assistant Commissioner, Division of Family Services, New York State Department of Social Services.

* * *

[61] Q. Returning for a moment to the question of a mother in the ADC program, what kind of information in her case file would indicate whether or not she was employable? Now I am referring specifically to a mother in this situation. A. I think we endeavor to the best of our ability to specify some of the kinds of general [62] information that would be utilized in assessing whether a mother was to be considered employable. I think that's stated in the department regulations, Part 385, what goes in in making a determination, whether such persons are essential for the care of children or other incapacitated members of the family, consideration being given to the number of children at home, their ages, instances of illness, handicap or special needs, any availability of adequate alternate places of care; but I'd like to make it quite clear that if a mother's presence in a

household is not essential, the only deterrent to her employment would be that she would be considered unemployable for other reasons, such as illness or participating in a training program.

Q. Absence of child care alone would not deem her unemployable? A. No, it would be a deterrent to her reporting and engaging in the employment or training.

Q. Well, what if there was absence of child care and absence of diligent efforts to find child care? Would a person still be found to be employable? [63] A. A person would be employable but not referrable at that point until there was adequate child care developed.

Q. What do you mean by "referrable" in that context? A. "Referrable" means to be referred to the State Employment Service Office.

Q. If a person were not making diligent efforts to find child care, that person would not be referrable to the New York Employment Service? A. Obviously the department would have to take appropriate action because of her failure to have complied with the requirements of the law, that she should have been making a diligent effort to find appropriate day care.

Q. What action would a local Social Services office take that would be appropriate if she was not making a diligent effort? A. Conceivably it would be termination of her assistance.

Q. But there would not be a referral? A. No. I think one of the fundamental requirements that is specified is that there be an adequate plan of child care.

Q. Is not an employable person required to pick up his or her assistance check at the State [64] Employment Service? A. Yes.

Q. Referring to Plaintiffs' Exhibit A for identification,

which is Section 131 of the New York Social Service Law—do you have a copy of that in front of you? A. I do now.

Q. Does Section 131 of the New York Social Services Law define as employable those mothers that do not make diligent efforts for child care, to locate child care? A. Yes, but I think when you read this law this is a subordinate clause. It says, ". . . notwithstanding diligent efforts by such person to obtain others to provide such care". You have to regard it as a subordinate clause to the main category.

Q. In other words, are you telling me that you do not think that the statute defines as employable those mothers who are not making diligent efforts to secure child care? A. No, I'm not saying that at all. All I'm saying is that the question of employability would become secondary. The person is failing to comply with the requirements of the law, not [65] making diligent effort. She would be subject to sanctions and penalities imposed by law.

Q. Would you say she is employable if she has not made diligent effort to search for child care? A. I would say her failure to cooperate and fulfill the requirements of the law would act as a bar to her reporting to employment or training. I think that's how we tried to write the regulations.

Q. Would you inform a person who is not making diligent efforts for child care that her grant would be subject to termination if she did not make those efforts? A. I think the regulations impose an explicit responsibility when mother's presence in the home is not essential that the only deterrent to her participation in training or employment is absence of adequate child care, and she is required by regulations to make such a diligent effort.

Q. I believe that was a fairly straight question. I am en-

titled to a yes or no answer. Would, under the regulations, a mother be told that she would be subject to termination of her grant if she did not make diligent efforts to locate child care? [66] A. Yes.

Q. Would she be told that she could be required to report to the State Employment Service because she was employable, not withstanding that she was not making diligent efforts to find child care? A. You seem to be saying the same thing in a different way, and I've tried at least to convey my understanding of the import and implications of the requirements, that there would be no basis for referring her because there would be other appropriate action that would be required because of her failure to conform to this legal requirement. There is—and I want to say in another way—there is an absolute requirement that a person not be referred unless there is an adequate plan of child care.

* * *

[92] Q. What specifically is meant by "participation"? At what point is a person considered to be participating in a training program? A. Well, I believe that I gave you some of the criteria. One of the problems, however, would be attendance, regularity of attendance.

Q. If a person were referred to the Work Incentive Program but had not yet been placed in a specific training opening within the Work Incentive Program, would that person come within the definition of participation? A. People who are in "hold" status are considered participants in a program. Once they have been enrolled in a program, despite the fact that they are not reporting to a specific training activity, they are still nonetheless participants; and there are always people in the "hold" status in a training program, particularly the Work Incentive Program, where

they shift over from [93] one component to another. As they, let's say, finish orientation courses, they move to the basic literacy education.

Q. If a person involved in the Work Incentive Program were to be placed in the "hold" status, would that person be considered participating in the Work Incentive Program? A. Yes, the only difference being the person that volunteers and one who does not volunteer, for it relates to the sanctions that you may exact against a person. A person who volunteers may not be penalized for his failure to participate.

Q. But this person who volunteers would not be considered to be employable for purposes of 71MB-49? A. That's correct.

Q. Again, we are still referring to this same exception to the definition of employability. Would you tell me what is meant by "full time participation" in a training or rehabilitation program? A. Well, conceivably there are some part time training activities which will not relieve a person of the obligation to participate, [94] to fulfill these requirements. The requirement about full time is not related to any specific set of hours but the conception that the training agency has, whether the program is full or part time.

Q. Does that mean that if the training agency considers a program to be part time that a person participating in that program would still be deemed employable? A. That's right. For example, a person who would be in basic literacy, which is not a full time component—and there are still such programs in New York State—would still be obligated to report.

Q. Would that apply to persons who do part time work under the Work Incentive Program? A. The people in the Work Incentive Program are all full time. Now it is conceivable that in time and place they may be part time, but it is our understanding that they are full time.

Q. Would the basic education course be considered to be full time? A. I think that would depend on the number of hours in which the individual participates. We have said to the State Employment Service, because of [95] our concern, that people not participate in some instances on full-time basis ought to be coupling basic literacy with work experience to insure they would be full time participants.

Q. So a person in the Work Incentive Program who would happen to be in a part time training position would be considered employable for purposes of this regulation of New York State? A. If he was so reported to us, yes; but as I have said to you, we have considered the Work Incentive Program and MDTA programs as full time training programs because they are so conceived by legislative act and purpose.

* * *

[132] Q. Mr. Phillips, is there any specific provision for defraying the cost of transportation to [133] pick up one's public assistance check at the State Employment Service? A. No, none at all.

Q. So that the recipient bears the expense of transportation to pick up the public assistance check? A. He is expected to use his regular basic allowance for this purpose.

Q. Are there any provisions in the statute or the regulations which provide that the factor of distance from an employment service shall be a good cause for a person to refuse to pick up his check at the State Employment Service once that person has been determined to be employable? A. There is not.

Q. So that if one is employable, one must travel to the State Employment Service wherever it may be located at his own expense, is that correct? A. Well, there is a qualification

to what you state. It is true to the extent there is some outreach service in the outlying areas where the State Employment interviewer goes out from the central office out into a community.

Q. This is the State Employment Service procedure? A. Yes.

[134] Q. Established by them? A. That's right. They have always had that for registration purposes, and at our insistence they integrated check delivery with it now. To that extent they agreed that they would take on this responsibility. I think that if you want to know the extent to which this has been implemented, you would have to ask them.

Q. There have been indications in this case that the department is in the process of drafting regulations to provide transportation assistance to these people. Are those regulations now being provided? A. I think that your conclusion is somewhat inexact. Let me just make two comments about transportation: (1) that we were aware that there was a possibility that there would be problems of people who are remote from Employment Service offices reporting on a regular basis because of a lack of transportation. We made a commitment that we would follow, monitor the program very closely in order to learn what the dimension of this problem was, and determining whether any appropriate and corrective action was necessary. [135] So far we have not had any information sufficient to help us reach a conclusion.

Q. On the other score, however, and that relates to car-fare, are regulations presently being drafted dealing with this issue? A. No, but there is one aspect on car-fare that I would like to touch on because you use the word "car-fare" generally. We might as well get it in the record. We have now had discussions with the Employment Service about providing tokens to people who are being required to report

to jobs, and we are on the verge of consummating an official agreement implementing those discussions. That would apply to districts, places where there is public transportation, and I think that it will probably be implemented in a handful of districts and expended, branched out.

Q. At this point do you require a specific report from local offices on transportation problems that have been arising? A. Not a specific report.

Q. How are you conducting the study? A. Our field staff in our area offices are in contact with the agencies to determine what [136] problems have arisen. We have a feedback from the Employment Service. So far we haven't had any significant feedback on this problem.

Q. At the present time there is no provision for paying transportation to a job interview, is that correct? A. Yes, as I said, there is no provision for providing car-fare for the client to report to the Employment Service, but we are implementing an agreement which would provide car-fare in the form of tokens to people who are being referred to jobs.

Q. Are they now being provided with car-fare? A. I think not. I don't think that the agreement has been implemented as of this date.

* * *

[153] Q. In 71MB-49, where you are conveying to local officers information about Section 385.3 D (d), there is a reference to "priority being given to referral to the Work Incentive Program". Could you tell me what is meant by "priority" in that context? A. You are talking about 385.4-(e).

Q. 385.3 D (d). A. Well, there is a statutory responsibility under the Social Security Act to refer ADC unemployed fathers to the Work Incentive Program within 30 days, and it was an effort to accommodate that statutory provision wherever there is a Work Incentive Program.

Excerpts from Deposition of Edward Phillips.

Q. Would this only apply to fathers in the ADCU Program? A. It might apply to others, too, but this is where [154] there is affirmative statutory responsibility. The way it works, if we talk about procedure, what happens is the person gets referred. He doesn't get immediately enrolled, sometimes within 30 days, because there is a waiting list on the part of the Employment Service. In the interim he would continue to report under 131 (.4) as long as he was on the waiting list.

Q. I take it it does refer to persons who are inappropriate for WIN. Would persons found inappropriate for the Work Incentive Program be referred, be found employable under the 1971 work rules in New York State? A. There is a possibility but I have some reservations about giving you a clear affirmative answer. I think it depends to some measure on what one means by "appropriate", what one means by "an employable". There are some gradations of difference. The Federal requirement of appropriations is much broader and more elastic and places more of assessment responsibility on the Employment Service.

Q. Is there a requirement in the Work Incentive Program that a mother exercise due diligence in her search for child care? [155] A. There is not.

Q. So that a mother who was found inappropriate, by virtue of the unavailability of child care, for WIN, might be found to be employable within the New York work rules because of her failure to make diligent effort to find child care? A. Well, I think, as I said, I think that is a very fine gradation. I'm not sure I would have unequivocal agreement with what you are saying.

Q. Does Federal regulation prohibit the participation in WIN of persons for whom adequate child care is not available? A. That is correct, but that is exactly the same requirement as 131 (4).

[3] **Excerpts from Deposition of Jule Sugarman.**

JULE M. SUGARMAN, a witness herein, being first duly sworn, was examined and testified as follows:

Examination by Mr. Freed:

Q. Mr. Sugarman, could you tell us your position at the present time? A. I am the Commissioner of Social Services of the City of New York.

Q. Do you hold any other positions? A. I do. I hold the position of Administrator of the Human Resources Administration, which is the parent agency of the Department of Social Services.

* * *

[29] Q. A two-part question: Part to the change in the city's procedures which provided for an employability interview prior to any declaration of employability, when a recipient received a letter in the mail stating that he or she was employable, did that recipient have a right to a fair hearing on that issue? A. Yes.

Q. To clarify, or amplify that response, could the recipient contact the social services department, complain about his or her classification as employable, demand a fair hearing on that issue and not be required to report to the employment service pending the determination of that issue? That is the State Department of Social Services. A. Let me be sure I understand your question. You are, as I understand it, positing a situation in which the individual has been notified that he is considered employable and required to report to the employment service and he has advised the local Department of Social Services that he considers himself not to be employable. Your question then is, was he at that time required to continue to report to the employment service until the issue could be [30] resolved by the local Department of Social Services?

Q. Let me rephrase it?

Upon receipt of such a letter informing the recipient that he has been declared employable, could the recipient demand a state fair hearing on the issue of employability, and pending the determination of that issue, would he be required to fulfill the obligations of an employable person?

A. It is my feeling that until the—I cannot testify directly on this because of the fact that I was here a very little time when these provisions were in effect—my understanding of the situation, however, though, is that until such time as an adverse action had been actually taken against him, the termination of assistance, that he would not have a cause of appeal to the state.

Q. Deputy Commissioner Phillips, in a deposition in this action, stated that the issue of employability would be contested in a hearing upon the issue of non-compliance with the requirements of the law. Does that statement correspond to the statement that you have just made? A. To the best of our knowledge the state does not hold that a determination of employability [31] in and of itself is an adequate cause for appeal. There is a section of the board rules, Section 84.3B3, that permits an applicant or a recipient to appeal a determination that he must participate in a service program.

In my judgment, however, the question of employability is not a question of determining that an individual must participate in a service program, and therefore this rule probably does not apply. I think it is correct to say that the practice in the department was to assume that no appeal could be made until an adverse action, such as termination of assistance, had occurred.

Q. Are you aware of the procedures followed in connection with the work incentive program? A. No.

Excerpts from Deposition of Jule Sugarman.

Q. I read to you now from Section 388.7 of the New York Code of Rules and Regulations, Title 18 of the New York Code of Rules and Regulations, pertaining to right to hearing under the work incentive program, and I quote: "A social services official shall inform ADC recipients in writing, and orally whenever practicable, of their right to a fair hearing by the department and the method by which a fair [32] hearing may be obtained, when", and then sub-2 "the person is aggrieved because he has been determined appropriate for referral to the work incentive program and disagrees with such determination." A. I believe that that provision derives from the requirements of federal law which are applicable to the "ADC" and "ADCU" categories but not to the home relief program.

Q. Is it your understanding that such a provision for a hearing is present in the work incentive program but not present under the state work amendments which were enacted in 1971? A. It is my understanding that federal law does require such a hearing in the case of "ADC" and "ADCU" for work incentive referrals, but such requirement does not exist unless further action is taken by the local Department of Social Services for home relief and "ADC" and "ADCU" in referrals under Section 131.4.

Q. Can a recipient of "ADC" or "ADCU" be referred to the State Employment Service pursuant to 131.4 of the New York social services law and not be referred to the work incentive program? A. Yes, because the state plan implementing [33] the work incentive program makes participation in the WIN program voluntary for women with children, whereas the requirements of referral under Section 131.4 do not automatically exempt women with children.

Q. So that a woman with children who is not subject to other than voluntary referral to the work incentive program

could be referred to the employment service pursuant to 131.4 and required to accept employment? A. If day care were available, yes.

Q. If a person receiving "ADC" or "ADCU" has been referred to the work incentive program but no slot is available at the present time and therefore that person is put on what I believe is termed a "hold" in the work incentive program, is that person subject to referral for employment under Section 131.4? A. Yes. All individuals participating in the work incentive program are subject to referral whether or not they are in hold status.

Q. If a person in that hold status were referred to a job and refused that job on what he felt were good-cause grounds, who would conduct the hearing into the question of good cause?

[34] A. If the individual were referred under Section 131.4 offered a job under that referral and refused, the hearing would be conducted by the Department of Social Services. The Department of Social Services would initially determine whether the individual should be terminated. If a hearing were requested, it would be held by the State Department of Social Services.

Q. Would such a person on a hold status in the work incentive program, if he were found to have refused that job referral without good cause, be subject to immediate termination of benefits? A. Yes.

Q. Would a period of counseling prior to termination be available to him? A. The law does not require such a period of counseling in the case of Section 131.4. Quite the opposite. It imposes a duty to terminate.

* * *

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Deputy Commissioner Eleanor Walsh of the State Department of Social Services, as Acting Commissioner in the absence of the Commissioner, George K. Wyman, being duly sworn, responds to the plaintiffs' first interrogatories, as follows (The text of each question is set forth before each answer as requested):

2.0 *General*

2.1 Q. Set forth the correct name and address for each named Defendant and set forth the correct job title for each official who is a named Defendant.

A. 1. New York State Department of Social Services (hereinafter Department) 1450 Western Avenue, Albany, New York 12203.

2. George K. Wyman, State Commissioner of Social Services (hereinafter Commissioner) 1450 Western Avenue, Albany, New York 12203.

2.2 Q. Briefly describe the job and duties of the named Defendants. In particular, state the statutory provisions, regulations or written statements which set forth their duties and responsibilities.

A. 1. The Department is the State executive and administrative agency which administers all the forms of social services for which the State is responsible and which supervises all social services work, as the same may be administered by any local unit of government. It distributes

State and Federal funds to local social services districts as authorized by law. The Department also is the "single State agency" for the programs of Aid to Dependent Children, Assistance for the Aged, Blind and Disabled, and Medical Assistance For Needy Persons, for which programs there is Federal reimbursement pursuant to the provisions of Titles IV, XVI, and XIX of the Social Security Act. There is detailed statutory provision for the authority and responsibilities of the Department throughout the State Social Services Law, including but not limited to sections 5, 20, 29, 32, 36-a, 74-h and various sections of Articles 5 and 6 thereof.

2. The Commissioner is the chief executive and administrative officer of the Department. His powers and duties are specifically provided for in various sections of the Social Services Law including but not limited to sections 11, 12, 13, 14, 15, 17 and 34 thereof.

2.3 Q. Set forth the names, addresses and official positions of any employees of DSS who are not named Defendants and who have policy-making authority in the area of promulgating and implementing regulations or HR, VA, ADC, ADC-U, OAA, APTD, and AB eligibility and administration and indicate as to each such employee, the scope of such authority.

A. There are no such employees. Only the Commissioner has policy-making authority.

2.4 Q. State whether the persons named in response to 2.3, if any, act under the direction and/or control of any of the named Defendants. Indicate which of the named Defendants possesses such authority.

A. See answer above to question 2.3.

2.5 Q. Briefly describe the procedure for promulgating regulations for the administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs. In particular state:

a. What official or officials may initiate changes in the New York State Plans and/or in any other regulations relating to the administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs; what official, officials or body must approve a regulation for it to become effective;

b. What chronological procedural steps beginning with the source of an initial proposal are taken to promulgate such regulations;

c. Identify the individuals responsible for drafting such regulations;

d. As to regulations concerning ADC, ADC-U, OAA, APTD, and AB whether any written or other expressed approval of the Department of Health, Education and Welfare is solicited and/or obtained prior to the promulgation of such regulations;

e. Whether the expressed approval referred to in 2.5(d) is solicited and/or obtained after such changes have become effective.

A. Only the Commissioner may make a change in the Regulations of the State Department of Social Services. There are no formal procedures for such a change other than those necessary to comply with the requirements of the Executive Law for the filing of a Regulation with the Secretary of State. Recommendations for a policy change are

often made by Deputy Commissioners but the Commissioner may consider suggestions made by other persons in the Department and also suggestions from sources outside the Department such as from local social services districts, the Federal Department of Health, Education and Welfare (hereinafter HEW), or from any interested person or organization. Generally, the Commissioner submits proposed policy changes to his Deputy Commissioners for their consideration and opinion prior to making his final decision. There are no persons specifically charged with the responsibility for drafting regulations. Many persons throughout the Department may participate in the drafting of a Regulation, depending upon the subject matter thereof.

Proposed Regulations concerning ADC, ADC-U, OAA, APTD, and AB are sometimes submitted to HEW for its consideration prior to promulgation. All changes in the Regulations, after promulgation, are submitted to HEW for its consideration.

26 Q. State briefly the facts surrounding the submission and approval of the New York State Plans. In particular, state:

a. What was the last date that New York submitted each of the New York State Plans for approval by the Secretary of HEW;

b. Whether the Secretary of HEW or his agents have ever withheld approval, questioned the compliance or otherwise indicated disapproval of any or all provisions of any of the New York State Plans. Specify each such instance.

c. Whether the New York Work Rules have been submitted for approval as part of the New York State Plans; if

the answer is affirmative, specify the date of such submission and the action taken by the Secretary of HEW;

d. Whether the New York State Plans have ever been the subject of full review by the Secretary of HEW. Specify the date, issues and outcome of such reviews.

(The plaintiffs' attorney has advised that this question relates only to the Work Rules Plan.)

A. The statutory enactments (L. 1971, C. 101, C. 102) on the Work Rules were submitted to the Regional Office of HEW for approval as amendments to the State Plan on July 8, 1971 as part of Transmittal 71-41. The Department has not, to date, received any notification from HEW of approval or disapproval of these plan amendments. The new Department Regulations, Part 385 (Restoring Employables to Self-Support), a copy of which is hereto annexed as Exhibit 1,* will soon be submitted to HEW for approval as a plan amendment.

2.7 Q. Identify each written communication, including any letters, notices, evaluations, reports or orders by the Secretary of HEW or his agents and agents of DSS or the County Department which is in any way related to the New York Work Rules. Identify all documents relating to the provisions or administration of New York's, HR, VA, ADC, ADC-U, OAA, APTD, and AB programs prepared by private or governmental evaluators, administrators or analysts if such documents were prepared at the request of and/or were financed in whole or in part by public officials either state or federal and are in any way related to the New York Work Rules. Please attach a copy of each document

*Exhibits are omitted from printed Appendix.

identified in response to this Interrogatory as part of the Answer to this Interrogatory.

A. The Department received a letter from HEW, dated April 28, 1971, annexed hereto as Exhibit 2, commenting on bills then before the State Legislature designed to enact the Work Rules. The Department has transmitted various Administrative Letters to local Social Services Commissioners relative to implementing the Work Rules program. These Letters are identifiable as 71 PWD-34, 43, 48, 52, 54, 64, 74 and 75, annexed hereto as Exhibits 3-10 respectively. As far as deponent knows, there are no identifiable documents related to the Work Rules prepared by private or governmental evaluators, administrators or analysts prepared at the request of and/or financed in whole or in part by public officials, except for those identified herein, and except for the reports of the local social services districts and the State Department of Labor, which reports (from the social services districts) are identified and discussed in answers to other questions in these interrogatories.

2.8 Q. Identify each oral communication between employees of DSS or the County Department and HEW which is in any way related to the New York Work Rules and give:

a. the date of such communication;

b. the name of each participant in such communication.

A. There are no identifiable records of such oral communications.

3.0 *New York Work Rules—Origins and Authority*

3.1 Q. How long has New York had a statute and/or regulations disqualifying recipients from receiving public assistance for refusal to accept a job referral?

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

A. Section 131 subdivision 4 of the Social Services Law was first enacted by L. 1959, C. 715. In substance, the statute then provided, as now, that a person who refuses employment is ineligible for public assistance. However, even before the enactment of this specific provision, it was always an implied condition of eligibility for public assistance that a person accept available employment and that refusal to accept would render him ineligible. This stems from consideration of section 131 subdivision 1 of the Social Services Law which provides that public assistance is to be furnished for those "unable to maintain themselves" and also from section 132 which provides that investigation of an application for public assistance shall consider the "ability to work of all members of the family". These provisions were in the original enactment of the Social Welfare Law (L. 1940, C. 619) and were found in substantially identical form in sections 77 and 78 of the earlier Public Welfare Law (L. 1929, C. 565).

In addition, with specific reference to the category of Home Relief, section 164, subdivision 4 of the Social Services Law which provides that a person who refuses to report for or perform work to which he has been assigned by the social services official shall become ineligible for Home Relief was re-enacted as part of a permanent work relief program by L. 1959, C. 714. This provision can be traced back to an earlier section 164 enacted by L. 1950, C. 435.

A specific Regulation providing for the disqualification of recipients for refusal to accept a job referral can be traced back to July, 1949. However, such refusal was always considered an implied ground for disqualification in connection with the requirements that recipients register with the State Employment Service going back to 1939.

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

3.2 Q. Describe in specific detail the circumstances of the enactment and promulgation of the New York Work Rules. In particular:

a. At the time when the legislation which ultimately became §§ 131(4), 164 and 350-k was pending before the New York Legislature, did any of the named Defendants or their agents communicate with the office of the Governor of the State of New York concerning said legislation;

b. Identify each such communication, including any letters, memoranda, or reports, referred to in 3.2(a). Please attach a copy each of such written communication as a part of the response to this Interrogatory. As to each such oral communication set forth:

(1) the date on which it occurred;

(2) the name of each participant.

c. Identify each person who is responsible for liason between the offices of the Governor of the State of New York and the New York State Department of Social Services and give each such person's official title.

A. This question relates to confidential communications and relationships with the Governor.

3.3 Q. Describe in detail the coverage of the New York Work Rules. Include a statement indicating whether any department policy or regulation beyond those set forth in Letters No. 34, No. 43, No. 48 and No. 52 is utilized in determining the appropriateness of HR, VA, ADC, ADC-U, OAA, APTD, and AB recipients or applicants for referral under §§ 131(4), 164 and 350-k. Give full citations or attach copies of all authorities so utilized.

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

A. The coverage of the New York Work Rules is described in detail in Administrative Letters 71 PWD-34, 43, 48, and 52, copies which have already been annexed hereto as exhibits 3 through 6. Further Administrative Letters relating to the operation of the Work Rules were 71 PWD-54, 64, 74, and 75, copies of which have already been annexed hereto as Exhibits 7 through 10. In addition, the Department has promulgated new Part 385 of the Regulations, copy of which has already been annexed hereto as exhibit 1, and has just published a new Bulletin 26, a copy of which is annexed hereto as Exhibit 11. These additional Administrative Letters, new Regulations, and new Bulletin are utilized in determining the appropriateness of recipients or applicants of public assistance for referral under sections 131(4) and 164 of the Social Services Law. There are no referrals under section 350-k of the Social Services Law.

4.0 *New York Work Rules—Operation* (All of the answers to this group of questions covers July, 1971 only, except as otherwise indicated, on a monthly basis, as this is the only month to date for which reports from all local social services districts have been received. The answers only relate to HR, VA, ADC and ADC-U, as the Work Rules are not applicable to OAA, APTD, and AB. The statistical information has been summarized and tabulated in Tables 1-6, annexed hereto as Exhibits 12-17 respectively. The tables show only total figures for all of the affected categories. There is no available breakdown of information according to the individual category.)

4.1 Q. Since July 1, 1971, for each of the following categories of assistance state the number of recipients of

assistance in each such category who have been sent a letter notifying them that they are "employable" under the New York Work Rules and requiring said recipients to report to an office of the State Employment Service ("SES"):

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. Statewide, there were 48,609 applicants and recipients who were required to report to SES, either by written notification or by verbal instructions. For a "county-by-county breakdown" or more accurately for a district by district breakdown, see Table I (Ex. 12).

4.2 Q. Of the total number of recipients referred to in 4.2 state, for each of the following categories, the total number of recipients who, subsequent to the sending of the letter referred to in 4.1, have been reclassified as "unemployable" under the New York Work Rules:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. There were 6,634 persons who failed to comply but continued to receive assistance on the basis of a change in employability status, temporary illness, or "other" circumstances such as the need to review and reevaluate employability status. See Table 5 (Ex. 16) for details for each social services district.

4.3 Q. As to the recipients referred to in 4.2, state by category the total number of recipients rendered "unemployable" by:

a. "illness or significant and substantial incapacity, either mental or physical;"

b. "advanced age;"

c. "full-time satisfactory participation in an approved program of vocational training or rehabilitation;"

d. "the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated . . . and for whom required care is not otherwise reasonably available notwithstanding dilligent efforts for such person to provide others to provide such care;"

e. "the need of such person to provide full-time care for other members of such person's household . . . who are children and for whom required care is not otherwise reasonably available notwithstanding dilligent efforts for such person to provide others to provide such care."

A. We have no available information to answer this question in the form presented. See Table 5 (Ex. 16) for the

available information relative to the reasons for continuation of assistance of those persons who failed to comply.

4.4 Q. Since July 1, 1971, for each of the following categories of assistance state the number of recipients of assistance in each such category who have been sent letters requiring them to report to an SES office because they are full-time participants in approved program of vocational training and rehabilitation:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. We do not have available information.

4.5 Q. State separately the number of recipients, who are participants in the WIN program, referred to in:

a. 4.4(c);

b. 4.4(d).

A. All WIN participants are required to report to SES under the Work Rules. In July, 1971 there were 15,065 WIN participants, of which 10,998 were in ADC and 4,067 were in ADC-U.

4.6 Q. For each semi-monthly reporting period since July 1, 1971 and for each of the following categories state

the number of persons who have been required to report to an SES office to pick up public assistance checks:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. For this information on a monthly basis, see Table I (Ex. 12) under Recipients—Grantee column of "Total Persons Required to Report to NYSES." (New York City has reported only a total for both applicants and recipients.)

4.7 Q. For each semi-monthly reporting period and for each of the following categories, state the number or recipients referred to in 4.6 who failed to report to the designated SES office:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. For this information on a monthly basis, see Table I (Ex. 12) under Recipients—Grantee column of "Total Per-

sons Who Failed to Report to NYSES." (New York City has reported only a total for both applicants and recipients.)

4.8 Q. For each of the categories of recipients and for each of the periods referred to in 4.7, state the number of recipients who failed to report to the designated SES office because:

a. they did not understand how the new system worked;

b. They wished to cancel their support rather than submit to the new system;

c. they disagreed with their classification as employable and were demanding hearings on their status.

A. We have no available information with respect to parts a and b. With respect to part c there were 285 requests for fair hearing received by the Department during the months of July and August of which 137 were in the categories of HR and VA, 78 were in ADC and ADC-U, and 69 are still unclassifiable as to category.

4.9 Q. State the total number of recipients for each of the following categories, whose public assistance has been terminated for failure to report to an office of SES to pick up their checks:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. See Table 3 (Ex. 14) for number of persons (grantees) who failed to report to SES. Information on termination is reported in Table 4 (Ex. 15) but there is no available breakdown as to the number of terminations for failure to report to SES.

4.10 Q. As to each category of public assistance (HR, VA, ADC, ADC-U, OAA, APTD and AB) state the total number of recipients of public assistance whose assistance has been terminated for each of the following reasons:

a. Failure to obtain and file with the social service district at least once in every two-week period a statement that no employment is available;

b. Willful failure to report for an interview at an employment office with respect to employment when requested to do so by such office;

c. Willful failure to report to such office the result of a referral to employment;

d. Willful failure to report to employment.

A. Our only available information relates to the total number of terminations for failure to comply as reported in Table 4 (Ex. 15).

4.11 Q. Set forth in detail the procedure followed by a local Social Services Department in evaluating the availability of recipients for employment and culminating in the sending of a letter to the recipient notifying him that he has been classified as "employable".

A. The procedures are specified in sections 385.1, 385.3 and 385.5 of the Regulations and are amplified in 71 PWD-43 (Ex. 4), PWD-52 (Ex. 6), PWD-64 (Ex.8), and revised Bulletin 26 (Ex.11).

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

4.12 Q. Set forth the number of recipients of ADC and ADC-U terminated because of failure to exercise due diligence in search of child-care.

A. According to deponent's best knowledge, information and belief, there have not been any terminations because of failure to exercise due diligence in search of child care.

4.13 Q. Set forth in detail the procedure followed when a recipient of public assistance who has been declared "employable" contests said finding of "employability".

A. In 71 PWD-64 (Ex. 8) it is specified that when a recipient of public assistance contests a finding of "employable", arrangements must be made immediately to secure a definitive medical determination of employability. Prior to a termination of assistance for failure to comply with the Work Rules a recipient must be given at least 7 days notice of the proposed termination with an opportunity for a pretermination review in accordance with the procedures under section 351.26 of the Regulations. If a final notice of termination is made after the review afforded under section 351.26 the recipient may request a fair hearing in accordance with the procedures of Part 84 of the Rules of the State Board of Social Welfare. Also, an applicant who has been denied assistance may request a fair hearing.

4.14 Q. If a hearing is provided to recipients on the issue of their "Employability" state, for each of the following categories the number of said hearings provided to recipients since July 1, 1971:

a. HR

b. VA.

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. There were 48 hearings held during July and August in HR and VA, and 13 were held in ADC and ADC-U.

4.15 Q. List in detail any public appropriations or expenditures specifically for the implementation of the New York Work Rules. State what portion of such monies, if any, are utilized for

a. educational training;

b. day-care facilities;

c. job development;

d. job counseling.

A. There are no State appropriations to the Department specifically for the implementation of the Work Rules. A State appropriation of $2,500,000 was made to the Department of Labor. Deponent has no knowledge of such appropriations or expenditures by any other governmental units.

4.16 Q. State what notice, if any, is given to a recipient of his right to contest his classification as "employable" under the New York Work Rules.

A. A recipient is given the 7 day notice under section 351.26 of the Regulations and of his right to have a pre-

termination review of the social services official's proposed determination. In 71 PWD-54 reference is made to the form of letter to be used and a copy of the letter referred to, taken from Bulletin 91B is annexed hereto as Exhibit 18. Also, section 84.4 of the Rules of the State Board of Social Welfare specifies that applicants and recipients are to be informed in writing and orally of their right to a fair hearing whenever the social services official makes any decision adversely affecting their receipt of assistance or amount thereof.

4.17 Q. Are public assistance recipients referred for employment under the New York Work Rules by an employee of a DSS? Is this policy state-wide? If not, list any social services district, county or city in which such referrals are made by Social Services employees.

A. The Department of Labor has the responsibility to provide manpower services and make referrals to employment. There may be occasional referrals to employment directly by a social services district but there is no data available as to the extent of such referrals.

4.18 Q. Describe in detail the procedures by which a recipient is apprised of a job offer under the New York Work Rules. In particular, state:

a. What procedure is used to determine what employment opportunities are available in the community;

b. What standards are used to determine the suitability of the employer, the type of employment and the conditions of employment for referrals to private employment under the New York Work Rules;

c. What explanation of what he must do, if any, is given to a recipient at the time he is informed of a job offer;

d. Whether a recipient at the time he is informed of a job offer;

d. Whether a recipient of ADC or ADC-U is expressly informed of the existence of WIN prior to being referred to employment offered pursuant to the New York Work Rules;

e. Whether a recipient of ADC or ADC-U is given an opportunity to volunteer for WIN prior to being referred to employment offered pursuant to the New York Work Rules;

f. At what point a termination of grant payments under the New Work Rules takes effect when a recipient refuses to accept the job;

g. Whether a recipient terminated under the New York Work Rules pursuant to § 131(4) is afforded the opportunity of an evidentiary hearing prior to the effective date of termination of benefits; If so, explain the policy mandating such hearing, or if such policy is written, attach a copy of any written policy mandating such a hearing;

h. Whether any additional persuasive efforts such as counseling are actually given a recipient declining to accept a job referral under the New York Work Rules after an initial refusal to accept an offered job;

i. When may a recipient, whose assistance is terminated pursuant to the New York Work Rules, reapply for public assistance; Specify all the conditions or qualifications for acceptance of such application and specify the statutes, regulations or written policy which sets forth such conditions or qualifications.

A. We are unable to respond to parts a, b, and c of the question as they relate to procedures of the Department of Labor.

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

With respect to part d, section 385.4 of the Regulations specifies that in social services districts where a WIN program is operating, each employable recipient of ADC or ADC-U determined to be appropriate shall be referred thereto. Such referral to WIN shall take priority over the manpower services to be made available to such recipients. It should also be noted under the same regulation that a participant in a WIN program is nevertheless required to continue reporting to SES in accordance with the Regulations.

With respect to part e, section 388.15 of the Regulations gives recognition to a volunteer for referral to WIN in establishing priorities for determination of appropriateness of referral. Again it should be noted that participation in WIN does not excuse the participant from the reporting requirements under the Work Rules.

With respect to part f, a termination cannot be affected prior to 7 days after the refusal. How soon after the 7 days a termination is effected depends upon various factors such as when the social services district is first notified of the refusal, when the social services district begins to process the termination procedure, and the course of the pre-termination review procedure.

With respect to g, a recipient is afforded such review prior to the effective date of termination of benefits under the provisions of section 351.26 of the Regulations, a copy of which (in its most recently amended form effective July 23, 1971) is hereto annexed as Exhibit 19.

With respect to h, the answer is no.

With respect to i, the sanctions for non-compliance with the Work Rules, including the duration of disqualification

for assistance is specified in section 131 subdivision 10 of the Social Services Law and section 385.6 of the Regulations.

4.19 Q. Describe in detail the procedures used to determine the availability and suitability of child care for employable individuals.

A. Sections 385.3 and 388.4 of the Regulations detail such procedures.

4.20 Q. Describe in detail the procedure and standards used to determine whether an employable individual for whom suitable child care services are available, should be referred to the WIN program or to other employment programs or opportunities. In particular state whether there are any statutes, regulations, or written policy statements which set forth the criteria or standards to be used in such determinations.

A. The policy is that referral to the Win program takes priority over other manpower services to be made available to such recipients (Reg. 385.4).

4.21 Q. Identify each report received from county or city Social Services departments pursuant to the requirements of § G of Administrative Letter No. 43 (pp. 17-19). Please attach a copy of each such report as a part of the response to this Interrogatory.

A. Annexed hereto, as a combined Exhibit 20 are copies of the reports received from the 64 social services districts for the month of July. These were used by the Department as work sheets for the preparation of the summary tabulations (Ex. 12 through 17).

5.0 *New York Work Rules—Public Works Project* (The statistical information supplied in answer to these reports is

incomplete since all of the 64 social services districts have not yet submitted their reports for the month of July 1971. The summary tabulations, Tables 1-5, annexed hereto as Exhibits 21-25 are based upon the reports supplied by 57 districts).

5.1 Q. For each of the following categories, state the total number of employable recipients of public assistance who have been referred to public works projects pursuant to §§ 164 and 350-k of the New York Work Rules:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A. Referrals to public works projects have only been made in HR and VA under section 164 of the Social Services Law. See Table 2 (Ex. 22) for number of recipients who have been placed in public work projects. We have no available data on referrals as a separate statistical item. Although New York City has not yet submitted its July report, the Department has been advised that no placements were made in that district in July.

5.2 Q. As to each public works project created pursuant to the New York Work Rules state the number of jobs provided in each of the following categories described in Letter No. 48:

a. Projects to maintain or develop adequate work habits;

b. Projects to maintain and improve existing skills;

c. Projects to develop new skills;

d. Projects of special interest to the local government.

A. We have no available information.

5.3 Q. Identify each report received to date from county or city Social Services departments pursuant to the requirements of § F of Administrative Letter No. 48 (pp. 8-10). Please attach a copy of each such report as a part of the response to this interrogatory.

A. Annexed hereto as a single Exhibit 25, are reports from 57 social services districts submitted to date.

6.0 *Work Incentive Program—WIN* Q. Where questions in the following group of interrogatories ask for total figures for the State of New York, Plaintiffs also request a county-by-county breakdown of all such total figures.

6.1 Q. State what Social Services district, counties and/or cities in New York have been determined by the Secretary of Labor to be appropriate for the WIN program and the date each Social Services district, county, or city was so designated. List for each of these Social Services districts, counties or cities, the number of authorized WIN openings or slots for each year of the WIN program.

A. See the tabular summary of the available information annexed hereto as Exhibit 27.

6.2 Q. State the annual average level of utilization of these openings or slots for each district, county or city where

openings were authorized for such districts, counties or cities.

A. See Ex. 27.

6.3 Q. State the total number of ADC and ADC-U recipients who have been involuntarily referred to WIN in the State of New York for each year since inception of the WIN program.

A. There is no available information as to the number of involuntary referrals as distinct from voluntary referrals. Annexed hereto as Ex. 27 is a tabular summary of the number of WIN referrals.

6.4 Q. State the total number of ADC and ADC-U recipients who have volunteered for WIN in the State of New York for each year since the inception of the WIN program.

A. We have no available data as to the number of volunteers.

6.5 Q. List in detail the priorities utilized, if any, in determining what recipients will be referred to the WIN program.

A. Section 388.15 of the Regulations specifies the priorities for determination of appropriateness for referral.

6.6 Q. List the total referrals, if any, of ADC recipients who are mothers of pre-school age children for the State of New York for each year since the inception of the WIN program.

A. We have no available data.

6.7 Q. State the total, if any, of ADC recipients who are mothers of pre-school children who have volunteered for enrollment in WIN in the State of New York.

A. We have no available data.

6.8 State whether day-care arrangements approved under state standards are made available to volunteers or referees under the WIN program. State how many slots in day care centers are actually available to ADC recipients in the State of New York.

A. Section 352.9 of the Regulations provides that day care shall be provided when the homemaker is receiving occupational training. To the same effect is section 385.3 with specific reference to a mother or female caretaker relative of children under the Work Rules. Also, under section 311.8 of the Regulation, it is specifically provided under the WIN program that needed child care services shall be provided by the social services district. We have no available data as to the number of slots in day care centers available specifically for ADC recipients, nor does deponent have any knowledge, information or belief that such slots exist.

6.9 Q. State the total number of ADC and ADC-U recipients whose assistance has been terminated for each of the following reasons:

a. Refusal to accept referral to WIN;

b. Refusal to accept training or employment under WIN;

c. Refusal to accept 60 days of counseling prior to termination under WIN.

A. We have no available data.

7.0 *Job Type.*

7.1 Q. Indicate the total number of

a. public works jobs

b. jobs in the regular economy

A. to which recipients have been referred pursuant to the New York Work Rules and, as to each such total indicate how many of such jobs are classified in each of the following categories:

a. Apparel Industries

b. Hotel and Restaurant

c. Household

d. Industrial

e. Office (Commercial)

f. Professional

g. Technical

h. Service

i. Agricultural

A. With respect to part a, see Table 1 (Ex. 21), showing number of available slots and number of slots filled during July. With respect to part b, we have no available information but this may be available from the Department of Labor.

7.2 Q. Indicate the number of public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are classified in each of the categories set forth in 7.1.

A. We have no available data at this time as to which projects were established either before or after July 1, 1971 but this information will be available shortly.

7.3 Q. Indicate the number of public works projects jobs to which recipients have been referred which pay:

a. From $.50 to $1.00 per hour;

b. From $1.00 to $1.50 per hour;

c. From $1.50 to $2.00 per hour;

d. From $2.00 to $2.50 per hour;

e. From $2.50 to $3.00 per hour;

f. From $3.00 to $3.50 per hour;

g. From $3.50 to $4.00 per hour;

h. From $4.00 to $4.50 per hour;

i. More than $5.00 per hour.

A. We have no available data at this time but this information will be available shortly. Under the provisions of section 385.9 of the Regulations, payment credits for work shall be at the State minimum wage or at the wages paid to the local government employee in the classified services for comparable work.

7.4 Q. Indicate the number of jobs in the regular economy in each salary category set out in 7.3 to which recipients have been referred pursuant to the New York Work Rules.

A. We have no available data but this information may be available from the Department of Labor.

7.5 Q. Indicate the number of jobs in public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are in each of the salary categories set forth in 7.3.

Answer of State Department of Social Services to Plaintiffs' Interrogatories.

A. We have no available data at this time but this information will be available shortly.

8.0 *Individual Recipients*

Q. Identify specifically and attach copies of all documents in the possession of state or local welfare departments relating to the cases of the following individuals. Include in this request copies of all notices to the clients, or letters or communications concerning fair hearings or appeals to the State Department of Social Services, or hearing officers reports, all notes or other documentary records of official actions, all narrative reports prepared by the case workers, and any other written material prepared by or available to the named Defendants that relate to the eligibility of the following recipients:

a. Dolores Dublino, 15th Street, Buffalo, New York;

b. Doris Jimerson, P. O. Box 53, Lantens, New York 14091;

c. Virginia Michael, Elvira Michael, Norman Michael, 3056 Wende Road, Alden, New York;

d. Janie Lee Phillips, 823 Virginia Street, Buffalo, New York;

e. Maria Marfoglia, 418 Busti Street, Buffalo, New York;

f. Henrietta Hunter, 97 Norwood Street, Buffalo, New York;

g. Mrs. Ollie Swanson, 242 Orange Street, Buffalo, New York.

A. A search of the Department's records has disclosed to date only a fair hearing record of Henrietta Hunter. Copies

of all the available documents in that file are annexed hereto as a single Exhibit 29. A copy of the stenographic transcript of the hearing will be available shortly.

s/ ELEANOR WALSH,
Acting Commissioner.

Dated: Albany, New York.

Sworn to before me
this 10th day of September, 1971.
s/ G. Jeffrey Haber,
Notary Public,
Rennselaer County
3/30/73.

Memorandum

State of New York Department of Social Services

Form DSS-524 (Rev. 11/68)
Formerly BOA-100

To: Mr. Robert B. Keyes Date: December 1, 1971
From: Marion R. Farren Subject: Dublino vs Wyman
(Donald W. Lyons)

The following is in response to the questions in Mrs. Coon's letter of November 5, 1971.

1. The answer to the question as to whether the numbers in the statistical material relate to persons or transactions is that such material relates to persons.

2. The Department has still not been able to obtain a New York City breakdown as to "applicants, grantees and

Memorandum.

other recipients" but efforts are being made to obtain this information in future months.

3. New York City did not submit the work relief summaries for August and September. It would appear that this information, for all practical purposes, is no longer retrievable.

4. Work relief statistics for the number of slots and the number of slots filled are figures for each month only and are not cumulative figures.

5. The material furnished earlier in response to questions 7.3 and 7.5 were based on reports received from upstate districts. Question 7.3 referred to the number of public work project jobs to which recipients have been referred. Our answer was 2,890. Question 7.5 referred to the total number of jobs that had been created in public works projects. Our answer was 6,554. This indicates, of course, that not all jobs created during the three month period had yet been filled.

6. The Department has no further breakdown information on the statistics reported in Table 5 of Exhibit 16 and cannot amplify the answer to question 4.2.

7. As to the discrepancies between referrals and failures to report in Tables 4 and 5 of August and September, these discrepancies result from New York City's report of a group of cases called "in process" which it said did not fit into any of the categories in the Tables.

Answer of Department of Labor to Plaintiffs' Interrogatory.

NEW YORK STATE DEPARTMENT OF LABOR

RE: DOLORES DUBLINO,

against

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES.

ANSWERS TO INTERROGATORIES DIRECTED TO DEFENDANTS NEW YORK STATE DEPARTMENT OF LABOR AND LOUIS L. LEVINE

2.0. *General*

2.1 *Set forth the correct name and address for each named Defendant and set forth the correct job title for each official who is Named Defendant.*

Answer: Louis L. Levine is the Industrial Commissioner. His address is the Department of Labor, State Campus, Building No. 12, Albany, New York, 12201.

2.2. *Briefly describe the job and duties of the named Defendants. In particular, state the statutory provisions, regulations or written statements which set forth their duties and responsibilities.*

Answer: The Industrial Commissioner is the head of the New York State Labor Department (Labor Law, Section 10). The general powers and duties of the Commissioner are enumerated in Section 21 and in other sections of Article 2 of the Labor Law. Specific powers and duties of the Industrial Commissioner concerning the Division of Employment and its Employment Service are set forth in Title 3

of Article 18 of the Labor Law, particularly Sections 530, 531 and 532 of the Labor Law.

2.3. *Set forth the names, addresses and official positions of any employees of the Department of Labor who are not named Defendants and who have policy-making authority in the area of promulgating and implementing regulations relating to the administration of referrals under the New York Work Rules.*

Answer: The Executive Director of the Division of Employment is Alfred L. Green (see Labor Law, Section 530, as amended effective May 1, 1970) and the Director of the Employment Service Bureau of the Division of Employment is Nelson F. Hopper. Their address is Division of Employment, State Campus, Building No. 12, Albany, New York 12201.

2.4. *State whether the persons named in response to 2.3, if any, act under the direction and/or control of any of the named Defendants. Indicate which of the named Defendants possess such authority.*

Answer: Mr. Green and Mr. Hopper are appointed by and act under the direction and control of the Industrial Commissioner, Louis L. Levine.

3.0 *New York Work Rules—Operation*

The following group of interrogatories asks for total figures for the State of New York. For each answer Plaintiffs also request a county-by-county breakdown of such total figures.

3.1 *For each semi-monthly reporting period since July 1, 1971 and for each of the following categories state the number of persons who have been required to report to an SES*

office to pick up public assistance checks: (HR, VA, ADC, ADC-U, OAA, APTD, AB).

Answer: This information is not available. The Division of Employment maintains only a district (not county) control on the number of public assistance checks received from departments of social services, number of checks distributed to public assistance recipients, and number of checks returned to departments of social services—see answer to 3.2.

3.2 *For each semi-monthly reporting period and for each of the following categories, state the number of recipients referred to in 3.1 who failed to report to the designated SES office: (HR, VA, ADC, ADC-U, OAA, APTD, AB).*

Answer: Information on categories of recipients, such as HR or VA, is not available. Information on the number of recipients who failed to report to the designated SES office may be inferred from the following data on the disposition of public assistance checks:

July, 1971—First Cycle

District	*Received from SSD's*	*Distributed*	*Returned to SSD's*
Buffalo	7,708	6,718	990
Binghamton	1,028	891	137
Albany	1,310	1,023	287
Syracuse	1,042	871	171
Rochester	1,359	1,036	323
Utica	988	817	171
Long Island	2,284	1,385	899
Westchester	593	383	210
New York City	11,824	8,959	2,865
Total	28,136	22,083	6,053

Answer of Department of Labor to Plaintiffs' Interrogatories.

July, 1971—Second Cycle

District	*Received from SSD's*	*Distributed*	*Returned to SSD's*
Buffalo	4,069	3,283	786
Binghamton	1,193	1,019	174
Albany	1,028	850	178
Syracuse	727	611	116
Rochester	1,724	1,382	342
Utica	938	734	204
Long Island	2,487	1,574	913
Westchester	519	373	146
New York City	18,340	14,380	3,960
Total	31,025	24,206	6,819

3.3 *State the total number of recipients for each of the following categories, whom SES has referred back to DSS for failure to report to an office of SES to pick up their checks: (HR, VA, ADC, ADC-U, OAA, APTD, AB).*

Answer: Since SES does not see recipients who fail to pick up their checks, it is impossible for SES to refer them back to DSS for this reason.

3.4 *As to each category of public assistance (HR, VA, ADC, ADC-U, OAA, APTD and AB) state the total number of recipients of public assistance referred back to DSS for each of the following reasons:*

Answer: SES does not break down its statistical counts by category of public assistance. In many instances, the category is not known to SES.

a. *Failure to obtain and file with the social service district at least once in every two-week period a statement that no employment is available.*

Answer: SES does not refer recipients back to DSS for this reason. In July, 1971, SES issued 13,272 "no employment available" statements.

b. *Willful failure to report for an interview at an employment office with respect to employment when requested to do so by such office.*

Answer: Inasmuch as a recipient did not report to SES, it is impossible for SES to refer him back to DSS.

c. *Willful failure to report to such office the result of a referral for employment.*

Answer: None.

d. *Willful failure to report for employment.*

Answer: In July, 1971, 2,564 recipients refused referral to employment, on 2,857 occasions; 1,780 accepted referral, but failed to report to the employer, on 1,891 occasions; 337 reported to the employer but refused the job, on 342 occasions; and 173 accepted the job but failed to come to work, on 177 occasions.

4.0 *SES Policies*

4.1 *Identify each office of SES which is being used to process recipients of public assistance pursuant to the New York Work Rules.*

Answer:

Office Number	*Address*	*Type of Ref*
410	255 West 54 Street, NYC	Industrial—only
411	250 Schermerhorn Street, Brooklyn	Industrial—only
412	42-15 Crescent Street, LIC	Industrial only
420	247 West 54 Street, NYC	Hotel & Restaurant place only

Answer of Department of Labor to Plaintiffs' Interrogatories.

Office Number	*Address*	**Type of Referrals*
421	250 Schermerhorn Street, Brooklyn	Service industries—only
422	259 West 54 Street, NYC	Service personnel—only
431	247 West 54 Street, NYC	Household—only
433	534 Courtland Avenue, Bronx	Household—only
435	60 Bond Street, Brooklyn	Household—only
437	42-15 Crescent Street, LIC	Household—only
440	238 West 35 Street, NYC	Apparel—only
441	58 Bond Street, Brooklyn	Apparel—only
460	444 Madison Avenue, NYC	Professional—only
450	25 Hyatt Street, St. George, S. I.	
480	575 Lexington Avenue, NYC	Office personnel—only
481	175 Remsen Street, Brooklyn	Office personnel—only
490	16 East 42nd Street, NYC	Sales & Merchandising—only
462-WIN	1704 Second Avenue, NYC	
463-WIN	1366 Inwood Avenue, Bronx	
464-WIN	358 E. 149 Street, Bronx	
465-WIN	250 W. 90 Street, NYC	
466-WIN	58 Bond Street, Brooklyn	
467-WIN	1181 E. New York Avenue, Brooklyn	
468-WIN	42-15 Crescent Street, LIC	
469-WIN	45 West 36 Street, NYC	
459-WIN	23 East 26 Street, NYC	
495-WIN	44 Court Street, Brooklyn	
211-WIN	44 Chapel Street, Albany	
261-1-WIN	315 E. Main Street, Patchogue, L. I.	
805-YOC	95 Central Avenue, Albany	
110	449 Main Street, Catskill	
3	13 South Street, Glens Falls	
10	18 N. Sixth Street, Hudson	
12	16-18 Pine Grove Avenue, Kingston	
13	39 Academy Street, Poughkeepsie	
4	404 Broadway, Saratoga	
5	600 Franklin Street, Schenectady	
7	380 River Street, Troy	
14	41 Dolson Avenue, Middletown	
114	10 Sussex Street, Port Jervis	
17	280 Broadway, Newburgh	
113	451 Main Street, Beacon	
295	1 Liberty Street, Bath	
895-YOC	87-89 Chenango Street, Binghamton	

Answer of Department of Labor to Plaintiffs' Interrogatories

Office Number	*Address*	*Type of Referral*
94	345 Denison Parkway East, Corning	
96	200 Baldwin Street, Elmira	
95	20 Broadway, Hornell	
91	Babcock Hall, Terrace Hill, Ithaca	
99	3 Liberty Street, Monticello	
92	20 So. Broad Street, Norwich	
93	12 Dietz Street, Oneonta	
195	161 1/2 N. Main Street, Wellsville	
78	61 Lake Shore Drive, West, Dunkirk	
79	214 W. Third Street, Jamestown	
74	215 Walnut Street, Lockport	
73	1324 Pine Avenue, Niagara Falls	
879	306 West State Street, Olean	
75	34 Seymour Street, Tonawanda	
858	540 E. Main Street, Rochester	
57	140 N. Main Street, Albion	
54	18 State Street, Batavia	
156	270 So. Main Street, Canandaigua	
52	3 Chestnut Avenue, Dansville	
56	32 Castle Street, Geneva	
152	Village Bldg., 103 Main Street, Mt. Morris	
53	151 N. Main Street, Newark	
251-WIN	83 N. Clinton Avenue, Rochester	
153	6 E. Main Street, Sodus	
55	76 No. Main Street, Warsaw	
45	232 Genesee Street, Auburn	
46	21 Groton Avenue, Cortland	
44	72 So. First Street, Fulton	
48	595 Main Street, Oneida	
43	147 W. First Street, Oswego	
241-WIN	677 So. Salina Street, Syracuse	
840	677 So. Salina Street, Syracuse	
843-STEP	321 Erie Blvd. W., Syracuse	
42	119 Sherman Street, Watertown	
35	71 Guy Park Avenue, Amsterdam	
34	199 So. Main Street, Gloversville	
32	205 No. Main Street, Herkimer	
25	40 Catherine Street, Malone	

Answer of Department of Labor to Plaintiffs' Interrogatories.

Office Number	*Address*	**Type of Referrals*
22	35 Glen Street, Massena	
21	419 Ford Street, Ogdensburg	
26	10 Peru Street, Plattsburg	
30	405 W. Dominick Street, Rome	
27	9 St. Bernard Street, Saranac Lake	
221-WIN	247 Elizabeth Street, Utica	
820	276 Genesee Street, Utica	
885-YOC	9 So. First Avenue, Mt. Vernon	
281-WIN	145 No. Fifth Avenue, Mt. Vernon	
85	432 Main Street, New Rochelle	
87	50 Commerce Street, Spring Valley	
80	418 North Division Street, Peekskill	
82	23-25 So. Main Street, Port Chester	
880	300 Hamilton Avenue, White Plains	
83	70 Ashburton Avenue, Yonkers	
66	1730 Union Blvd., Bay Shore	
69	565 Willow Avenue, Cedarhurst	
64	84 No. Main Street, Freeport	
61	25 Glen Cove Avenue, Glen Cove	
161	330 Great Neck Road, Great Neck	
68	344 Fulton Avenue, Hempstead	
262-WIN	95 Jackson Street, Hempstead	
860	2 West Avenue, Hicksville	
65	25 Depot Road, Huntington Station	
867	293 E. Main Street, Patchogue	
261-WIN	315 E. Main Street, Patchogue	
63	945 W. Main Street, Riverhead	
163	117 Main Street, Bridgehampton	
876	295 Main Street, Buffalo	
271-WIN	523 Delaware Avenue, Buffalo	
874-WIN	1687 Main Street, Buffalo	

*Unless indicated otherwise, offices make referrals to all vocations.

4.2 *As to each office listed in 4.1, indicate whether said office normally refers individuals to work in all vocations. If said office normally refers individuals only to certain designated vocations, indicate which vocations.*

Answer: See answer to 4.1. Unless indicated otherwise, offices make referrals to all vocations.

4.3 *Set forth in detail the procedure followed in attempting to secure placement in a job for an individual voluntarily seeking employment through SES.*

Answer: Refer to enclosed New York State Employment Service Bureau Procedures Manual.* Procedure for referring individuals voluntarily seeking employment through SES to jobs is contained in Section 4000, "Selection, Referral and Verification." Special procedure for "Serving Veterans" is contained in Section 7000 and SES policy and procedure for processing discrimination cases are contained in Section 12000, "Equal Employment Opportunity."

4.4 *Set forth in detail the procedure followed in attempting to secure placement in a job for an individual referred to SES pursuant to the New York Work Rules. Specify any statutes, regulations, or written policies which set forth such procedures.*

Answer: Refer to enclosed New York State Employment Service Bureau Procedures Manual. Special procedure for serving recipients of public assistance is contained in section II 17090-17099, "Cooperation with the New York State Department of Social Services." Also refer to New York State Department of Social Services policies and procedures. Pertinent agreement between New York State Department of Social Services and New York State Department of Labor is enclosed.

4.5 *In attempting to secure jobs for persons whom it is serving, does SES follow any priorities as between:*

*Exhibits and attachments are omitted from printed Appendix.

Answer of Department of Labor to Plaintiffs' Interrogatories.

a. *Recipients of public assistance and recipients of unemployment compensation;*

Answer: SES does not follow any priorities in referral to jobs between recipients of public assistance and recipients of unemployment compensation.

b. *Persons referred pursuant to the New York Work Rules and persons in WIN.*

Specify any statutes, regulations or written or informal policies which set forth such priorities.

Answer: SES emphasizes referral to jobs for individuals receiving service pursuant to section 131.4 of the Social Services Law while persons in WIN are more likely to be referred to training to upgrade their skills before they are referred to a job. Refer to New York State Employment Service Procedures Manual, Section II 26500 for procedures for the Work Incentive Program.

4.6 *For each of the following general job classifications, from July 1, 1971 to date, state the total number of job opportunities to which referrals were made through the SES in New York State, and for each county of the State:*

a. *Apparel Industries*

b. *Hotel and Restaurant*

c. *Household*

d. *Industrial*

e. *Office (commercial)*

f. *Professional*

g. *Technical*

h. *Sales and Merchandising*

i. *Service*

j. *Agricultural*

Answer: Data by job classification and by county are not available. In July, 1971, SES received from employers notices of 63,157 job opportunities. In July 1971, 67,462 referrals were made to job openings in the State.

4.7 *With regard to job opportunities for each general job classification set forth in 4.6 indicate the total number of opportunities for jobs which pay:*

a. *From $ .50 to $1.00 per hour;*

b. *From $1.00 to $1.50 per hour;*

c. *From $1.50 to $2.00 per hour;*

d. *From $2.00 to $2.50 per hour;*

e. *From $2.50 to $3.00 per hour;*

f. *From $3.00 to $3.50 per hour;*

g. *From $3.50 to $4.50 per hour;*

h. *From $4.50 to $5.00 per hour;*

i. *More than $5.00 per hour.*

Answer: The requested information is not available.

4.8 *With regard to the job opportunities set forth in 4.6, state the total number of jobs filled in New York State, and for each county of the State, since July 1, 1971:*

a. *In each general job classification set forth in 4.6;*

b. *At each pay level set forth in 4.7.*

Answer of Department of Labor to Plaintiffs' Interrogatories.

Answer: Data by job classification, by pay level, and by county are not available. In July, 1971, SES filled 24,167 jobs (some individuals held more than one job in that month).

4.9 *State the total number of "employable" recipients of public assistance referred for employment, since July 1, 1971:*

a. *In each general job classification in 4.6.*

b. *At each pay level set forth in 4.7.*

Answer: Data by job classification and by pay level are not available. In July, 1971, 12,648 employable public assistance recipients were referred to employers for employment.

4.10 *State the total number of "employable" recipients of public assistance who have been placed in jobs since July 1, 1971:*

a. *In each general job classification set forth in 4.6;*

b. *At each pay level set forth in 4.7.*

Answer: Data by job classification and by pay level are not available. In July, 1971, 1,537 employable public assistance recipients were placed in jobs.

4.11 *Describe in detail the procedures by which a recipient is apprised of a job offer under the New York Work Rules. In particular, state:*

a. *What procedure is used to determine what employment opportunities are available in the community;*

b. *Whether there are any standards or procedures used to determine the suitability of the employer, the type of em-*

ployment and the conditions of employment for referrals to private employment under the New York Rules;

Answer: Procedures for determining what employment opportunities are available in the community, the conditions of employment, etc. are contained in the Employment Service Bureau Procedures Manual, Section 3000, "Order Taking and Job Solicitation," Section 4000, "Selection, Referral and Verification" and Section 17090-17094, "Cooperation with New York State Department of Social Services".

c. *What explanation, if any, is given to a recipient, before the time he is informed of a job offer, of that recipient's rights and obligations for continued assistance;*

Answer: Employable public assistance recipients are required to attend an orientation session on their first visit to SES. During this session they are apprised of their rights and responsibilities under the new law. See Employment Service Bureau Procedures Manual, Section 17094, p. 4. In addition, they receive the brochure, "Facts for Public Assistance Recipients" (copy enclosed).

d. *Whether a recipient of ADC or ADC-U is expressly informed of and/or is actually given an opportunity to volunteer for WIN as an alternative to employment offered pursuant to the New York Work Rules.*

Answer: The Employment Service Bureau Procedures Manual states in Section 26525, "The determination that a welfare recipient is appropriate for referral to WIN is the responsibility of the local social services agency.".

Answer of Department of Labor to Plaintiffs' Interrogatories.

5.0 *Referrals Under WIN*

5.1 *Set forth the total number of WIN participants in New York State and in each district, county or city in which there is a WIN program, who have been referred to employment in the regular economy as mandated by 42 U. S. C. § 630 (1).*

Answer: The total number of participants referred is not known. However, in July, 1971, 430 WIN participants were referred to employment as mandated by the Social Security Act and placed in employment, as follows:

WIN Installation	*Number*
Albany (Albany, Rensselaer, Schenectady Counties)	35
New York City	158
Erie County	47
Monroe County	7
Nassau County	11
Niagara County	32
Oneida County	36
Onondaga County	47
Suffolk County	37
Westchester County	20

5.2 *Set forth the number of WIN participants referred to in 5.1 who have been referred for employment:*

a. *In each of the general job classifications set forth in 4.6:*

Answer: The following occupational breakdown is available:

Occupational Category	*Number*
Professional, Technical and Managerial	52
Clerical and Sales	128
Service	116
Farming, Fishery, and Forestry	1
Processing	7
Machine Trades	28
Bench Work	16
Structural Work	20
Miscellaneous Occupations	62

b. *At each of the wage levels set forth in 4.7:*

Answer: The following wage-level breakdown is available:

Wage Level Category	*Number*
Total	430
Less than $1.85*	37
$1.85-1.99	82
2.00-2.49	132
2.50-2.99	98
3.00-3.49	44
3.50-3.99	17
4.00 and over	20

*Includes non-monetary compensation and base pay jobs with commissions.

5.3 *Set forth the total number of WIN participants in New York State and in each district, county, or city in which there is a WIN program, who have been referred to training for work in the regular economy as mandated by 42 U. S. C. § 630 (2).*

Answer of Department of Labor to Plaintiffs' Interrogatories.

Answer: The total number of participants referred to training is not known. However, in July, 1971, the count of WIN participants referred to, and enrolled in, training, was as follows:

WIN Installation	*Number*
Albany (Albany, Rensselaer, Schenectady Counties)	18
New York City	365
Erie County	82
Monroe County	4
Nassau County	22
Niagara County	19
Oneida County	12
Onondaga County	21
Suffolk County	20
Westchester County	53
State total	616

5.4 Set forth the number of WIN participants referred to in 5.3 who have been referred to training:

a. *In each of the general job classifications set forth in 4.6:*

Answer: The occupational pattern of the 616 enrollees is as follows:

Occupational Category	*Number*
Professional, Technical and Managerial	152
Clerical and Sales	256
Service	66
Farming, Fishery, and Forestry	—
Processing	1
Machine Trades	64

Occupational Category	*Number*
Bench Work	21
Structural Work	35
Miscellaneous Occupations	21
Total	616

b. *At each of the wage levels set forth in 4.7.*

Not available.

5.5 *Set forth the total number of WIN participants in New York State and in each district, county or city in which there is a WIN program, who have been referred for participation in special work projects, as mandated by 42 U. S. C. § 630 (3).*

Answer: None.

5.6 *Set forth the number of WIN participants referred to in 5.5 who have been referred for participation in special work projects:*

a. *In each of the general job classifications set forth in 4.6.*

Answer: None.

b. *At each of the wage levels set forth in 4.7.*

Answer: None.

LOUIS L. LEVINE,
Industrial Commissioner.

Sworn to before me
this thirteenth day of September, 1971.
Judd D. Grey,
Notary Public, Saro. Co.
46-1568775—3/30/74.

Letter Dated November 11, 1971.

STATE OF NEW YORK
Department of Labor
State Office Building Campus
Albany, N. Y. 12226

November 11, 1971

(Seal)

Judd D. Grey
Deputy Industrial Commissioner
For Legal Affairs

Mrs. Jean Coon
Office of Attorney General
State Capitol
Albany, New York

Re: Dublino v. Wyman

Dear Jean:

In response to the question raised by the plaintiff's attorneys, listed below are the question numbers in the original and supplemental interrogatories to which our responses contained statistical data and an indication as to whether the statistical data relates to persons or transactions.

Question

3.2 — Welfare Checks

3.3* — Welfare Checks

3.4a — Transactions

3.4b* — Persons

3.4d — Persons and Transactions (occasions)

4.6 — Transactions

4.8** — Transactions

4.9 — Persons

4.10** — Persons

5.1 — Persons

5.2 — Persons

5.3 — Persons

5.4 — Persons .

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*Refer to reply dated October 19, 1971.

**For the reply dated October 19, 1971 on reports MA 7-18 and MA 7-18C data relates to persons.

In addition, supplemental material consisting of statistical data which was submitted to you relates to persons or transactions as follows:

1. Research Bulletin (1971) No. 2.

a. Table 1—Transactions

b. Table 2—Transactions

c. Table 3—Transactions

d. Table 4—Persons

e. Table 5—Persons

f. Table 6—Persons

g. Table 7—Persons

Letter Dated November 11, 1971.

h. Table 8—Persons

i. Table 9—Persons

2. *Operations*, April 1, 1971.

a. Table 1—Persons

b. Table 2*—Transactions and Persons

c. Table 3**—Persons

d. Table 4**—Persons

e. Table 6A***—Transactions (except initial certification data which relates to persons)

Table 6B***—Persons

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*Individual counted once for each placement.
**Individual counted once for each type of service given.
***Excludes WIN participants. Refer to pp. 55-61. All data relates to persons.

3. Working Paper 1971—No. 12.

a. Table 1—Transactions

b. Table 2—Transactions

c. Table 3—Persons

d. Table 4—Persons

e. Table 5—Persons

f. Table 6—Persons

The collection of information as to job classifications and salaries mentioned in your letter will be in relation to placements and *not* referrals under this program as you stated. This is in accordance with our written reply to question 4.10 on October 19, 1971. The report will be

available on the 25th of the month following the month being reported.

Sincerely,

JUDD D. GREY,

Judd D. Grey,

Deputy Industrial Commissioner for Legal Affairs.

JDG:AWS

CC Commissioner Levine
Commissioner Dunn

Memorandum

STATE OF NEW YORK

Department of Labor

Division of Employment

(Seal)

State Office Building Campus

Albany, New York 12201

Public Employment Service
(Seal)
Service for Everyone
Local . State . National

December 20, 1971

MEMORANDUM TO: Commissioner Judd Grey

Re: Dublino vs. Wyman
Mrs. Coon's letter to you dated
December 15, 1971

The following are the questions raised by the plaintiffs and our answers.

Memorandum.

1. *Question: What is Form ES-20 and can we have a copy?*

Answer: Form ES-20 is referred to in the Employment Service Bureau Procedures Manual, Section 17098, paragraph B. As it states: "Selected characteristics of applicants returned to Social Services as unemployable will be reported on ES 20 report form".

Copies of the procedure, including facsimiles of the ES-20, as issued 7/1/71 (white) and revised 11/22/71 (pink) are attached. The procedure and form were revised to use more accurate terminology by substituting "claiming unemployable status" and "applicant claims inability to work" for "unemployable".

2. *Question: In the tables provided by your Department, there is a table MA7-18c which shows social services registrant placements. There is also a table MA 7-18, does that include social services registrants?*

Answer: Yes. Table MA 7-18c contains placement data only for social services registrants while Table MA 7-18 is for all registrants including social services registrants.

3. *Question: There is a disparity between placement figures provided by Social Services and your Department. The Labor Department figures show 5,812 persons placed in last regular job. Does that mean that, if a registrant is placed in more than one job during the reporting period, only the last placement is counted for reporting purposes?*

Answer: Yes. The figure of 5,812 appears in the Table MA 7-18c which is prepared quarterly. If a registrant is placed in more than one job during the specific quarterly period, only the last placement is counted for reporting purposes.

The Social Services figure is a monthly statistic. While the statistics from Social Services may take into account a recipient placed more than once during a given month, they do not distinguish recipients placed more than once in a quarterly period when the placements occur in different months. In addition, allowance should be made for differences in time lag in the reporting systems.

As requested we are providing copies of the joint report by the Departments of Social Services and Labor for October to the Governor.

WILLIAM L. O'TOOL,
Deputy Executive Director.

Attachment

Answer of Erie County to Plaintiffs' Interrogatories.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

(Title Omitted in Printing.)

George G. Sipprell, for his reply to the numbered interrogatories herein set forth, replies.

2.0 General

2.1 Set forth the correct name and address for each named Defendant and set forth the correct job title for each official who is named Defendant.

George G. Sipprell, Commissioner of the Erie County Department of Social Services, with offices at 95 Franklin Street, Buffalo, New York.

2.2 Briefly describe the job and duties of the named Defendants. In particular, state the statutory provisions, regulations or written statements which set forth their duties and responsibilities.

Formulates, in conjunction with principal deputies, basic policies, standards, and program objectives, and recommends to Board of Social Welfare for final approval.

Directs through subordinates and administrative operation of the Department.

Appoints members of the Departmental staff, certifies staff payrolls, and submits annual budget to the Board of Social Welfare for approval.

Consults with the Erie County Legislature, Comptroller, County Attorney, and other department heads in matters relating to Social Welfare in the County and the administration of the Department.

Maintains good public relations through contacts with private welfare agencies, the State Department of Social Services, American Public Welfare Association, Chamber of Commerce and other private, governmental organizations, and civic groups.

Serves as Chief Administrative and Executive Officer for Board of Social Welfare.

Enforces and applies as the same relates to all Erie County Public Assistance recipients, all provisions of the Social Welfare Law of the State of New York, All Regulations, Bulletins, Administrative Letters and other mandates, promulgated by the State Department of Social Services.

2.3 Set forth the names, addresses and official positions of any employees of DSS who are not named Defendants and who have policy-making authority in the area of promulgating and implementing regulations on HR, VA, ADC, ADC-U, OAA, APTD, and AB eligibility and administration and indicate as to each such employee, the scope of such authority.

Defendant George G. Sipprell has no knowledge or information available to him to answer this question.

2.4 State whether the persons named in response to 2.3, if any, act under the direction and/or control of any of the named Defendants. Indicate which of the named Defendants possesses such authority.

Defendant George G. Sipprell, has no knowledge or information available to him to answer this question.

2.5 Briefly describe the procedure for promulgating regulations for the administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs. In particular state:

a. What official or officials may initiate changes in the New York State Plans and/or in any other regulations relating to the administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs; what official, officials or body must approve a regulation for it to become effective;

b. What chronological procedural steps beginning with the source of an initial proposal are taken to promulgate such regulations;

c. Identify the individuals responsible for drafting such regulations;

d. As to regulations concerning ADC, ADC-U, OAA, APTD, and AB whether any written or other expressed approval of the Department of Health, Education and Welfare is solicited and/or obtained prior to the promulgation of such regulations;

e. Whether the expressed approval referred to in 2.5 (d) is solicited and/or obtained after such changes have become effective.

Defendant George G. Sipprell, has no knowledge or information available to him to answer this question.

2.6 State briefly the facts surrounding the submission and approval of the New York State Plans. In particular, state:

a. What was the last date that New York submitted each of the New York State Plans for approval by the Secretary of HEW;

b. Whether the Secretary of HEW or his agents have ever withheld approval, questioned the compliance or otherwise indicated disapproval of any or all provisions of any of the New York State Plans.

c. Whether the New York Work Rules have been submitted for approval as part of the New York State Plans; if the answer is affirmative, specify the date of such submission and the action taken by the Secretary of HEW;

d. Whether the New York State Plans have ever been the subject of full review by the Secretary of HEW. Specify the date, issues and outcome of such reviews,

Defendant George G. Sipprell, has no knowledge or information available to him to answer this question.

2.7 Identify each written communication, including any letters, notices, evaluations, reports or orders by the Secretary of HEW or his agents and agents of DSS or the County Department which is in any way related to the New York Work Rules. Identify all documents relating to the provisions or administration of New York's HR, VA, ADC, ADC-U, OAA, APTD, and AB programs prepared by private or governmental evaluators, administrators, or analysts if such documents were prepared at the request of and/or were financed in whole or in part by public officials either state or federal and are in any way related to the New York Work Rules. Please attach a copy of each document identified in response to this interrogatory as part of the Answer to this Interrogatory.

Defendant George G. Sipprell, has no knowledge or information available to him to answer this question.

2.8 Identify each oral communication between employees of DSS or the County Department and HEW which is in any way related to the New York Work Rules and give:

a. the date of such communication;

b. the name of each participant in such communication.

There have never been any oral communications between employees of the County Department, and HEW.

3.0 *New York Work Rules—Origins and Authority*

3.1 How long has New York had a statute and/or regulations disqualifying recipients from receiving public assistance for refusal to accept a job referral?

Section 131 subd. 4 of the New York State Social Services has been enforced by the local Agency, since its effective date, April 22, 1959.

3.2 Describe in specific detail the circumstances of the enactment and promulgation of the New York Work Rules. In particular:

a. At the time when the legislation which ultimately *became §§131(4),* 164 and 350-k was pending before the New York Legislature, did any of the named Defendants or their agents communicate with the office of the Governor of the State of New York concerning said legislation:

b. Identify each such communication, including any letters, memoranda, or reports, referred to in 3.2(a). Please attach a copy each of such written communication as a part of the response to this Interrogatory. As to each such oral communication set forth:

(1) the date on which it occurred;

(2) the name of each participant.

c. Identify each person who is responsible for liason between the offices of the Governor of the State of New York and the New York State Department of Social Services and give each such person's official title.

Defendant, George G. Sipprell, has no knowledge or information available to him to answer this question.

3.3 Describe in detail the coverage of the New York Work Rules. Include a statement indicating whether any Department policy or regulation beyond those set forth in Letters No. 34, No. 43, No. 48 and No. 52 is utilized in determining the appropriateness of HR, VA, ADC, ADC-U, AA, APTD, and AB recipients or applicants for referral under §§131(4), 164, and 350-k. Give full citations or attach copies of all authorities so utilized.

Defendant, George G. Sipprell, has no knowledge or information available to him to answer this question.

4.1 Since July 1, 1971, for each of the following categories of assistance state the number of recipients of assistance in each such category who have been sent a letter notifying them that they are "employable" under the New York Work Rules and requiring said recipients to report to an office of the State Employment Service ("SES"):

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A categorical breakdown of items (a) thru (g) inclusive is not available to the Agency. The total of categories to whom letters were sent for the month of July was 7,015.

4.2 Of the total number of recipients referred to in 4.2 state, for each of the following categories, the total number of recipients who, subsequent to the sending of the letter referred to in 4.1, have been reclassified as "unemployable" under the New York Work Rules:

a. HR 625

b. VA 0

c. ADC 549

d. ADC-U 107

c. OAA 0

f. APTD 0

g. AB 0

4.3 As to the recipients referred to in 4.2, stated by category the total number of recipients rendered "unemployable" by:

a. "illness or significant and substantial incapacity, either mental or physical;"—960

b. "advanced age,"—none

c. "full-time satisfactory participation in an approved program of vocational training or rehabilitation:"—unavailable

d. "the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated . . . and for whom required care is not otherwise reasonable available notwithstanding dilligent efforts for such person to provide others to provide such care:"—unavailable

e. "the need of such person to provide full-time care for other members of such person's household . . . who are children and for whom required care is not otherwise reasonable available notwithstanding dilligent efforts for such person to provide others to provide such care."—321

4.4 Since July 1, 1971, for each of the following categories of assistance state the number of recipients of assistance in each such category who have been sent letters requiring them to report to an SES office because they are full-time participants in approved program of vocational training and rehabilitation:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

A categorical breakdown of items (a.) thru (g.) is not available to the Agency. The total of all such categories is approximately 400.

4.5 State separately the number of recipients, who are participants in the WIN program, referred to in:

a. 4.4 (c)

b. 4.4 (d)

c. categorical breakdown of items (a.) and (b.) is not available, to the Agency. The total of items (a.) and (b.) is 1,400.

4.6 For each semi-monthly reporting period since July 1, 1971 and for each of the following categories state the number of persons who have been required to report to an SES office to pick up public assistance checks:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

	ADC	*ADC-U*	*HR*	*VA*
7/1	3,006	597	3002	None
7/16	423	144	2452	None
8/1	2,439	316	2864	None
8/16	2,039	266	2585	None
9/1	1,900	263	1790	None

4.7 For each semi-monthly reporting period and for each of the following categories, state the number of recipients referred to in 4.6 who failed to report to the designated SES office:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

	ADC	*ADC-U*	*HR*	*Total*
7/1	233	62	357	652
7/16	33	15	353	401
8/1	162	27	333	522
8/16	170	26	362	558
9/1	282	40	286	608

4.8 For each of the categories of recipients and for each of the periods referred to in 4.7, state the number of recipients who failed to report to the designated SES office because:

a. they did not understand how the new system worked:

b. they wished to cancel their support rather than submit to the new system:

c. they disagreed with their classification as employable and were demanding hearings on their status.

a. —none

b. —83

c. —for the month of August, 1971—263.

4.9 State the total number of recipients for each of the following categories, whose public assistance has been terminated for failure to report to an office of SES to pick up their checks:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

a. —204

b. —0

c. —65

d. —7

e. —0

f. —0

g. —0

4.10 As to each category of public assistance (HR, VA, ADC, ADC-U, OAA, APTD and AB) state the total number of recipients of public assistance whose assistance has been terminated for each of the following reasons:

a. Failure to obtain and file with the social service district at least once in every two-week period a statement that no employment is available;

b. Willful failure to report for an interview at an employment office with respect to employment when requested to do so by such office;

c. Willful failure to report to such office the result of a referral to employment;

d. Willful failure to report to employment.

4.10

a. None

b. None

c. None

d. None

4.11 Set forth in detail the procedure followed by a local Social Service Department in evaluating the availability of recipients for employment, and culminating in the sending of a letter to the recipient notifying him that he has been classified as "employable".

The Caseworker interviews the client and determines whether he is employable in relation to the guidelines in 71 PWD-43, Page 4 "Definition of Employable".

4.12 Set forth the number of recipients of ADC and ADC-U terminated because of failure to exercise due diligence in search of child-care.

No statistics available.

4.13 Set forth in detail the procedure followed when a recipient of public assistance who has been declared "employable" contests said finding of "employability".

Procedure when a client is delcared "unemployable" as a result of information furnished to the NYSES when he reports for service and check pick-up:

1. Upon return of the ES-28 (report from the NYSES to ECDSS) the Accounting Division is notified and the next check placed on mail.

2. The ES-28 is reviewed in the Agency Medical Division. If medical substantiation is available it is forwarded to the caseworker to enable him to remove the client from employable status.

3. If no medical verification is available, a 7-day notice (91-B) is mailed to the client. This includes a notification of his right to a Fair Hearing. If the client takes no further action, he is considered in non-compliance and steps taken to close the case.

If, however, the client notified the caseworker that he is still unable to work, he is told that it is his responsibility to obtain medical verification. If for practical reasons he is unable to obtain this verification prior to the date of his next check, and can produce evidence that he had begun the

procedure to obtain such verification, then no action is taken until the verification is received. An attempt is made to finalize the termination within 30 days.

4.14 If a hearing is provided to recipients on the issue of their "employability", state for each of the following categories the number of said hearings provided to recipients since July 1, 1971:

a. HR

b. VA

c. ADC

d. ADC-U

e. OAA

f. APTD

g. AB

Categorical breakdown not available.

4.15 List in detail any public appropriations or expenditures specifically for the implementation of the New York Work Rules. State what portion of such monies, if any, are utilized for

a. educational training—none

b. day-care facilities—none

c. job development—none

d. job counseling—none

4.16 State what notice, if any, is given to a recipient of his right to contest his classification as "employable" under the New York Work Rules.

If a client feels he is unemployable he is given a seven-day notice which indicates his right to contest his classification with his caseworker and/or the caseworker's supervisor. This notice also includes his right to request a fair hearing through the State Department of Social Services.

4.17 Are public assistance recipients referred for employment under the New York Work Rules by an employee of a DSS? Is this policy state-wide? If not, list any social services district, county or city in which such referrals are made by Social Services employees.

In Erie County referrals for employment under the New York Work Rules are made by SES. The social service employment counsellors do make referrals for employment under long standing rules of the department itself.

4.18 Describe in detail the procedures by which a recipient is apprised of a job offer under the New York Work Rules. In particular, state:

4.18a What procedure is used to determine what employment opportunities are available in the community?

This is a prerogative of the New York State Employment Service.

4.18b What standards are used to determine the suitability of the employer, the type of employment and the conditions of employment for referrals to private employment under the New York Work Rules.

This is a prerogative of the New York State Employment Service.

418c What explanation of what he must do, if any, is given to a recipient at the time he is infomred of a job offer.

This is a prerogative of the New York State Employment.

4.18d Whether a recipient of ADC or ADC-U is expressly informed of the existence of WIN prior to being referred to employment offered pursuant to the New York Work Rules;

This is a prerogative of the New York State Employment.

4.18e Whether a recipient of ADC or ADC-U is given an opportunity to volunteer for WIN prior to being referred to employment offered pursuant to the New York Work Rules;

This is a prerogative of the New York State Employment Service.

4.18f At what point a termination of grant payments under the New York Work Rules takes effect when a recipient refused to accept the job;

When a recipient refused to accept a job a seven-day notice is sent to the recipient indicating a termination of grant payments unless he can establish the refusal as being with good cause. If good cause is not established the termination of grant payments becomes effective when the next check is due.

4.18g Whether a recipient terminated under the New York Work Rules pursuant to §131 (4) is afforded the opportunity of an evidentiary hearing prior to the effective date of termination of benefits: If so, explain the policy mandating such hearing or, if such policy is written, attach a copy of any written policy mandating such a hearing;

When a recipient refused to accept a job a seven-day notice is sent to the recipient indicating a termination of grant payments unless he can establish the refusal as being with good cause. If good cause is not established the ter-

mination of grant payments become effective when the nex check is due.

Attached is Bulletin 128 from the New York State Depart ment of Social Services.

4.18h Whether any additional persuasive efforts such as counseling are actually given a recipient declining to accep a job referral under the New York work Rules after an initial refusal to accept an offered job;

Only if the recipient reapplies for assistance at the end of the 30-day period of suspension or termination of grant.

4.18i When may a recipient, whose assistance is ter- minated pursuant to the New York Work Rules, reapply for public assistance; Specify all the conditions or qualifications for acceptance of such application and specify the statutes, regulations or written policy which sets forth such con- ditions or qualifications.

A recipient may reapply for public assistance 30 days after termination of grant. If the recipient meets all ordinary eligibility standards he must agree in writing to comply with New York Work Rules. These regulations are contained in Administrative Letter 71 PWD-43, attached hereto.

4.19 Describe in detail the procedures used to determine the availability and suitability of child care for employable individuals.

See attached Bulletin No. 93 New York State Department of Social Services.

4.20 Describe in detail the procedure and standards used to determine whether an employable individual for whom suitable child care services are available, should be referred to the WIN program or to other employment programs or

opportunities. In particular state whether there are any statutes, regulations, or written policy statements which set forth the criteria or standards to be used in such determinations.

See attached Bulletin No. 93 New York State Department of Social Services.

4.21 Identify each report received from county of city Social Services departments pursuant to the requirements of §G of Administrative Letter No. 43 (pp. 17-19). Please attach a copy of each such report as part of the response to this Interrogatory.

No reports available.

5.1 For each of the following categories, state the total number of employable recipients of public assistance who have been referred to public works projects pursuant to §§164 and 350-k of the New York Work rules:

a. HR 761

b. VA 0

c. ADC 0

d. ADC-U 0

e. OAA 0

f. APTD 0

g. AB 0

5.2 As to each public works project created pursuant to the New York Work Rules state the number of jobs provided in each of the following categories described in Letter No. 48:

a. Projects to maintain or develop adequate work habits; 21

b. Projects to maintain and improve existing skills; 21

c. Projects to develop new skills; 0

d. Projects of special interest to the local government 21

5.3 Identify each report received to date from county or city Social Services departments pursuant to the requirements of SF of Administrative Letter No. 48 (pp. 8-10). Please attach a copy of each such report as a part of the response to this Interrogatory.

No reports available on a County level.

6.0 *Work Incentive Program*—WIN

Where questions in the following group of interrogatories ask for total figures for the State of New York, Plaintiffs also request a county-by county breakdown of all such total figures.

No reports available on a County level.

6.1 State what Social Services districts, counties and/or cities in New York have been determined by the Secretary of Labor to be appropriate for the WIN program and the date of each Social Services district, county, or city was so designated. List for each of these Social Services districts, counties or cities, the number of authorized WIN openings or slots for each year of the WIN program.

No reports available on the County level.

6.2 State the annual average level of utilization of these openings or slots for each district, county or city where openings were authorized for such districts, counties or cities.

No reports available on the County level.

6.3 State the total number of ADC and ADC-U recipients who have been voluntarily referred to WIN in the State of New York for each year since inception of the WIN program.

No reports available on County level.

6.4 State the total number of ADC and ADC-U recipients who have volunteered for WIN in the State of New York for each year since the inception of the WIN program.

No reports available in County level.

6.5 List in detail the priorities utilized, if any, in determining what recipients will be referred to the WIN program.

Attached is Bulletin 93 from the State Dept. of Social Services which lists in detail the priorities utilized in determining what recipients will be referred to the WIN Program.

6.6 List the total referrals, if any, of ADC recipients who are mothers of preschool age children for the State of New York for each year since the inception of the WIN program.

No reports available on County level.

6.7 State the total, if any, of ADC recipients who are mothers of pre-school children who have volunteered for enrollment in WIN in the State of New York.

No reports available on County level.

6.8 State whether day-care arrangements approved under state standards are made available to volunteers or referees under the WIN program. State how many slots in day care centers are actually available to ADC recipients in the State of New York.

No reports available on County level.

6.9 State the total number of ADC and ADC-U recipients whose assistance has been terminated for each of the following reasons:

a. Refusal to accept referral to WIN;

b. Refusal to accept training or employment under WIN;

c. Refusal to accept 60 days of counseling prior to termination under WIN.

No reports available on County level.

7.0 *Job Type*

7.1 Indicate the total number of

a. public works jobs

b. jobs in the regular economy to which recipients have been referred pursuant to the New York Work Rules and, as to each such total indicate how many of such jobs are classified in each of the following categories:

a. Apparel Industries

b. Hotel and Restaurant

c. Household

d. Industrial

e. Office (Commercial)

f. Professional

g. Technical

h. Service

j. Agricultural

No reports available on County level.

7.2 Indicate the number of public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are classified in each of the categories set forth in 7.1.

The Erie County Department of Social Services has participated in the Work Relief Projects in accordance with the State Work Rules and has participated in projects set forth as follows:

Please refer to the following sheet.

10-1-71

WORK RELIEF PROJECTS

Project	*Order*	*Slots*	*Filled*	*Pending*
Village of Blasdell	6	12	0	12
Clarence Central Schools	5	10	0	10
Bd. of Education (City Tonawanda)	11	22	0	22
Lake Shore Central Schools	6	12	10	2
Erie Comm. College	8	16	0	16
Urban Center	20	40	21	19
Lancaster Central School Dist.	4	8	0	8
Depew Public Schools	(12 male	24)	0	24
	(9	18)	0	18
Eden Central School Dist.	20	40	2	38
Hamburg Central Schools	6	12	0	12
Vill. of Hamburg—Dept. Public Works	Unlimited		0	
East Jr. H. S., West Seneca	6	12	12	0
Food Stamp Office	3	9	9	0
Receptionist Program	5	10	10	0
Parks	60	120	120	0
Auto Bureau	6	12	12	0
Central Records	10	20	20	0
Civil Defense	5	10	10	0

Date	Project	Order	Slots	Filled
7/71	Comptroller (old order)	1	1	1
7/71	Printing Office	7	14	14
7/71	Board of Elections (old order)	1	2	2
7/71	Comptroller's Office (old order)	1	2	2
8/16	Health Dept.—Education	3	9	9
7/71	Mail Room	4	8	8
7/71	Health Dept.—Stores	3	6	6
7/71	E. J. Meyer Hospital (old order)	3	6	6
8/71	Photostating Div.	4	8	6
7/71	Air Pollution	1	2	2
9/71	Accounting	10	20	10
9/71	Mr. Gleason (Rm. 783)	35	70	30
9/27	ECHJ—Verbal	(20 female)		
		(15 male)	70	2
			625	324
9/27	ECH&I	(8 female 3 men)		
9/30	Mail Room	1 clerical		
		2 College caliber		
		4 male		

7.3 Indicate the number of public works projects jobs to which recipients have been referred which pay:

7.4 Indicate the number of jobs in the regular economy in each salary catergory set out in 7.3 to which recipients have been referred pursuant to the New York Work Rules.

No report available on County level.

7.5 Indicate the number of jobs in public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are in each of the salary categories set forth in 7.3.

a. From $.50 to $1.00 per hour 0

b. From $1.00 to $1.50 per hour 0

c. From $1.50 to $2.00 per hour 0

d. From $2.00 to $2.50 per hour 0

e. From $2.50 to $3.00 per hour 0

f. From $3.00 to $3.50 per hour 0

g. From $3.50 to $4.00 per hour 0

h. From $4.00 to $4.50 per hour 0

i. More than $5.00 per hour 0

8.0 *Individual Recipients*

Identify specifically and attach copies of all documents in the possession of state or local welfare departments relating to the cases of the following individuals. Include in this request copies of all notices to the clients, or letters or communications concerning fair hearings or appeals to the State Department of Social Services, or hearing officers reports, all notes or other documentary records of official actions, all narrative reports prepared by the case workers, and any other written material prepared by or available to the named Defendants that relate to the eligibility of the following recipients:

a. Dolores Dublino, 15th Street, Buffalo, New York;

b. Doris Jimerson, P. O. Box 53, Lantens, New York 14091;

Date	*Project*	*Order*	*Slots*	*Filled*
7/71	Comptroller (old order)	1	1	1
7/71	Printing Office	7	14	14
7/71	Board of Elections (old order)	1	2	2
7/71	Comptroller's Office (old order)	1	2	2
8/16	Health Dept.—Education	3	9	9
7/71	Mail Room	4	8	8
7/71	Health Dept.—Stores	3	6	6
7/71	E. J. Meyer Hospital (old order)	3	6	6
8/71	Photostating Div.	4	8	6
7/71	Air Pollution	1	2	2
9/71	Accounting	10	20	10
9/71	Mr. Gleason (Rm. 783)	35	70	30
9/27	ECHJ—Verbal	(20 female) (15 male)	70	2
			625	324
9/27	ECH&I	(8 female 3 men)		
9/30	Mail Room	1 clerical 2 College caliber 4 male		

7.3 Indicate the number of public works projects jobs to which recipients have been referred which pay:

7.4 Indicate the number of jobs in the regular economy in each salary catergory set out in 7.3 to which recipients have been referred pursuant to the New York Work Rules.

No report available on County level.

7.5 Indicate the number of jobs in public works projects established from July 1, 1971 to the date of the Answer to this Interrogatory which are in each of the salary categories set forth in 7.3.

a. From $.50 to $1.00 per hour 0

b. From $1.00 to $1.50 per hour 0

c. From $1.50 to $2.00 per hour 0

d. From $2.00 to $2.50 per hour 0

e. From $2.50 to $3.00 per hour 0

f. From $3.00 to $3.50 per hour 0

g. From $3.50 to $4.00 per hour 0

h. From $4.00 to $4.50 per hour 0

i. More than $5.00 per hour 0

8.0 *Individual Recipients*

Identify specifically and attach copies of all documents in the possession of state or local welfare departments relating to the cases of the following individuals. Include in this request copies of all notices to the clients, or letters or communications concerning fair hearings or appeals to the State Department of Social Services, or hearing officers reports, all notes or other documentary records of official actions, all narrative reports prepared by the case workers, and any other written material prepared by or available to the named Defendants that relate to the eligibility of the following recipients:

a. Dolores Dublino, 15th Street, Buffalo, New York;

b. Doris Jimerson, P. O. Box 53, Lantens, New York 14091;

c. Virginia Michael, Elvira Michael, Norma Michael, 3056 Wende Road, Alden, New York;

d. Janie Lee Phillips, 823 Virginia Street, Buffalo New York;

e. Maria Marfoglia, 418 Busti Street, Buffalo, New York;

f. Henrietta Hunter, 97 Norwood Street, Buffalo New York;

g. Mrs. Ollie Swanson, 242 Orange Street, Buffalo New York.

Photostatic copies of the entire records of Erie County Plaintiffs have been previously hand delivered to Michael A O'Connor of the Legal Aid Bureau of Buffalo, Inc., Neighborhood Legal Services, 481 Swan Street, Buffalo, New York.

Respectfully submitted,

ROBERT E. CASEY, JR.,
County Attorney,
Office and P. O. Address,
(7th Floor—25 Delaware Avenue)
Buffalo, New York.

MARIO C. GAMBACORTA,
Supervising Counsel, of counsel,
Attorney for Defendants.

Order of August 1, 1972.

Opinion of the Court
Dated July 28, 1972.

[printed in full in Appendix to Jurisdictional statement of State appellants]

Order of August 1, 1972.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

(Title Omitted In Printing.)

Sir:

Take notice of an Order, of which the within is a copy, duly granted in the within entitled action on the 1st day of August, 1972, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 1st day of August, 1972.

Dated: Buffalo, New York, August 1, 1972

JOHN K. ADAMS,
Clerk, U. S. District Court,
U. S. Courthouse,
Buffalo, New York 14202.

To:

Michael A. O'Connor, Esq.,
Mayer G. Freed, Esq.,
Attorneys for Plaintiffs.

To:

Jean M. Coon, Esq.,
Attorney for Defendants N. Y. S.

To:

Leonard C. Koldin, Esq.,
Attorney for Defendant-Intervenors.

To:

Gregory Stamm, Esq.,
Attorney for Defendant Erie County.

FEDERAL RULES OF CIVIL PROCEDURE 77 (d).

The penultimate paragraph of the opinion of the three-judge court is amended to read as follows:

> Counsel for plaintiffs are directed to prepare an order of judgment and submit it to the court, upon notice to counsel for defendants, within ten days of the date of this order.

So ordered.

JOHN T. CURTIN,
United States District Judge.

Dated: August 1, 1972

Order and Judgment dated August 25, 1972.

[printed in full in Appendix to Jurisdictional statement of State appellants.]

Motion to Amend Order.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York
(Title Omitted In Printing.)

Pursuant to Rule 59 (e) of the Federal Rules of Civil Procedure, Plaintiffs move this Court to amend its Order herein, entered on August 25, 1972, to incorporate in said Order the provisions of Plaintiffs' Proposed Order (submitted August 7, 1972; filed August 30, 1972) and Proposed Amendment to Proposed Order (filed August 28, 1972), except that, with respect to costs and attorneys fees, paragraph 5 of this Court's Order herein shall remain unchanged.

Respectfully submitted,

LEGAL AID BUREAU OF
BUFFALO, INC.,
NEIGHBORHOOD LEGAL
SERVICES,
Michael A. O'Connor,
of Counsel,
481 Swan Street,
Buffalo, New York 14204
(716) 853-2850.

/s/ DENNIS R. YEAGER,
Mayer G. Freed,
423 West 118th Street,
New York, New York 10027
(212) 866-8591.

Attorneys for Plaintiffs.

Notice of Proposed Order.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

(Title Omitted In Printing.)

To:

Jean M. Coon,
Assistant Attorney General,
State Capitol,
Albany, New York 12224.

Mario C. Gambacorta,
Erie County Welfare Attorney,
County Hall,
Buffalo, New York.

Leonard C. Koldin,
600 South State Street,
Syracuse, New York 13202.

PLEASE TAKE NOTICE that the attached order will b
presented to the United States District Court for the Weste
District of New York, pursuant to the Decision and Order
that Court herein which was entered on July 28, 1972.

MAYER G. FREED,
Attorney for Plaintiffs,
423 West 118th Street,
New York, New York 10027.

Proposed Order.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

(Title Omitted In Printing.)

This matter having come on to be heard on July 2, 1971, July 9, 1971, July 16, 1971, February 24, 1972, and pursuant to this Court's opinion of July 28, 1972, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That pursuant to 28 U. S. C. §§2201 and 2202, N. Y. Soc. Serv. L. §§131 (4) and 350-k, 18 N. Y. C. R. R. Part 385, and all Administrative Letters of the New York State Department of Social Services issued pursuant thereto (these statutes, regulations and Administrative Letters are hereafter referred to collectively as the "New York Work Rules"), be and are hereby declared to be in conflict with §402 (a) (10) of the Social Security Act of 1935 as amended, 42 U. S. C. §602 (a) (10), and to be preempted by §§402 (a) (19) and 430 *et seq.* of the Social Security Act of 1935, as amended, 42 U. S. C. §§602 (a) (19) and 630 *et seq.*, and are unconstitutional under the supremacy clause of Article VI of the United States Constitution, insofar as they are applied to applicants for or recipients of Aid to Families with Dependent Children and Aid to Families with Dependent Children—Unemployed Parent (these two programs will hereafter be referred to as "AFDC") in the State of New York.

2. That from the date of this Order, Defendents, their successors, agents, and all persons acting in concert with them, be and hereby are permanently enjoined, ordered, and directed to cease all enforcement of the New York Work Rules against recipients of and applicants for AFDC in the State of New York.

3. That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, be and are hereby enjoined, ordered, and directed to award, within one hundred and twenty (120) days from the issuance of this Order, or in the alternative are hereby enjoined, ordered and directed to require each local Social Services District in the State of New York to award, within one hundred and twenty (120) days from the issuance of this Order, to each applicant for or recipient of AFDC during the period from July 1, 1971 until the date of this Order who was denied AFDC assistance or whose AFDC assistance was terminated pursuant to the New York Work Rules, those benefits of which each such person was deprived pursuant to the implementation of the New York Work Rules. Such award of retroactive payments shall consist of all benefits to which each person would have been entitled but for the operation of the New York Work Rules, and shall not be limited to benefits for the thirty (30) day period of ineligibility under the New York Work Rules. Where any such person, after having been denied AFDC or after having had AFDC benefits terminated, did not reapply for AFDC until more than thirty (30) days after such denial or termination of AFDC, or did not reapply at all, such award of retroactive payments shall be for the entire period during which such person received no assistance, unless it can be shown to the satisfaction of this Court that such person would not have been eligible for AFDC for reasons other than application of the New York Work Rules. Such award of retroactive payments will be mailed to each such person currently receiving AFDC within one hundred twenty (120) days from the issuance of this Order with an Explanatory Letter, said letter having first been approved by Plaintiffs' attorneys. Any award received pursuant to this paragraph shall not be

deemed income or resources for purposes of computing eligibility for public assistance. For such persons not presently receiving AFDC:

(a) A certified letter (return receipt requested), said letter having first been approved by Plaintiffs' attorneys, will be sent to the last known address of each such person, informing him or her in concise and easily understandable terms of his or her right to reapply for AFDC benefits, and that he or she is owed an award of retroactive assistance, with the amount specified by the New York State Department of Social Services, that such amount may be claimed by contacting the local Social Services District, at a specified address, within seventy five (75) days from the receipt of said letter and that if such a claim is not made within seventy five days, said award of retroactive payment will be forfeited.

(b) If the local Social Services District has not received such a request for the award of retroactive payments within seventy five (75) days from the date of the returned receipt, the right to said award of retroactive payment shall be forefeited.

4. That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine be and are hereby enjoined, ordered and directed to award, within one hundred twenty (120) days from the issuance of this Order, or are enjoined, ordered and directed to require each local Social Services District in the State of New York to award, within one hundred twenty (120) days from the issuance of this Order, to each current or former recipient of AFDC who, from July 1, 1971 until the date of this Order, expended money to comply with the requirements of the New York Work Rules, such money as was expended by each such recipient to comply with the requirements of the New York Work Rules.

To effectuate this Order Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, are hereby enjoined, ordered and directed to send a certified letter (return receipt requested), said letter first having been approved by Plaintiffs' attorneys, to each current or former recipient of AFDC who, during the period from July 1, 1971 until the date of this Order, was declared "employable" pursuant to the New York Work Rules, notifying such recipient of his or her right to apply to the local Social Services District for compensation for expenditures incurred in complying with the New York Work Rules and that if such application is not made within seventy five (75) days, the right to said compensation shall be forfeited.

If the local Social Services District has not received such an application within seventy five (75) days from the date of the returned receipt, the right to said compensation shall be forfeited.

As to each such current or former recipient of AFDC who contacts the local Social Services District to apply for such compensation, a representative of the local Social Services District shall meet with such recipient to determine the amount of money expended, and shall authorize the payment of such amount to the recipient.

5. That Defendants New York State Department of Social Services and Abe Lavine be and are hereby enjoined, ordered, and directed to require each local Social Services District in the State of New York to hereafter deliver all checks for AFDC benefits by mail, such checks to be for the full monthly or semi-monthly benefit, and to cease requiring any AFDC recipients, including any person participating in the Work Incentive Program, to obtain his or her check for

AFDC benefits by reporting in person to an office of the State Employment Service.

6. That Plaintiff's First, Second, and Third Causes of Action be and are hereby dismissed, except that with respect to Plaintiffs' Second Cause of Action, Defendants New York State Department of Social Services and its Commissioner Abe Lavine, be and hereby are enjoined, ordered and directed to send a letter to each recipient of Home Relief, who has been declared employable pursuant to the New York Work Rules, which shall contain the following statement in both English and Spanish:

> "When you were classified as an unemployed employable recipient on (date), the letter which notified you of your classification did not inform you that you had the right to request a fair hearing if you disagreed with your classification as an unemployed employable. This letter is to inform you of your right to such a hearing. If you feel that you are not employable because of your age or health, or because you have to take care of someone who is either ill or a child, or because you are in school or a training program, or if you have any other reasons to feel you are not employable, fill out the enclosed form requesting a fair hearing and return it to this Department in the enclosed pre-paid self addressed envelope."

Defendants New York State Department of Social Services and its Commissioner Abe Lavine are further enjoined, ordered and directed to enclose with such letter a form requesting a fair hearing, together with a pre-paid self addressed envelope. Said form shall state in both English and Spanish:

"I ..... hereby request a
(name)
fair hearing to contest my classification as an unemployed employable recipient. I feel I am not employable because ....."

Further, Defendants New York State Department of Social Services and its Commissioner are hereby enjoined, ordered and directed to require each local Social Services District, when notifying any recipient of Home Relief of his or her classification as an unemployed employable recipient, to include in such letter the following statement in both English and Spanish:

"If you disagree with your classification as an unemployed employable recipient, you may request a fair hearing. If you feel that you are not employable because of your age or health, or because you have to take care of someone who is either ill or a child, or because you are in school or a training program, or if you have any other reasons to feel you are not employable, fill out the enclosed form requesting a fair hearing and return it to this Department in the enclosed self addressed envelope."

Defendants New York State Department of Social Services and its Commissioner Abe Lavine are further enjoined, ordered, and directed to require each local Social Services District to enclose with the aforesaid letter notifying a recipient of Home Relief of his or her classification as an unemployed employable recipient, a form requesting a fair hearing, together with a pre-paid self addressed envelope. Said form shall state in both English and Spanish:

"I ..... hereby request a
(name)
fair hearing to contest my classification as an unem-

ployed employable recipient. I feel I am not employable because ....."

7. That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, are hereby enjoined, ordered and directed to award, within one hundred twenty (120) days from the issuance of this Order, or in the alternative are hereby enjoined, ordered, and directed to require each local Social Services District to award, within one hundred twenty (120) days from the issuance of this order, to each applicant for or recipient of Home Relief during the period from July 1, 1971 until the date of this Order who was denied Home Relief assistance or whose Home Relief assistance was terminated pursuant to the New York Work Rules without having been informed that he or she had a right to a fair hearing to contest his or her classification as an unemployed employable recipient, those benefits of which such person was deprived pursuant to the implementation of the New York Work Rules. Such award of retroactive payments shall consist of all benefits to which such such person would have been entitled but for the operation of the New York Work Rules, and shall not be limited to benefits for the thirty (30) day period of ineligibility under the New York Work Rules. Where any such person, after having been denied Home Relief or after having had Home Relief benefits terminated, did not reapply for Home Relief until more than thirty (30) days after such denial or termination of Home Relief, or did not reapply at all, such award of retroactive payments shall be for the entire period during which such person received no assistance, unless it can be shown to the satisfaction of this Court that such person would not have been eligible for Home Relief for reasons other than the application of the New York Work Rules. Such award of retoractive benefits will be

mailed to such person currently receiving Home Relief within one hundred twenty (120) days from the issuance of this Order with an Explanatory Letter, said letter having first been approved by Plaintiffs' attorneys. Any award received pursuant to this paragraph shall not be deemed income or resources for pusposes of computing elibitility for public assistance. For such persons not presently receiving Home Relief:

(a) A certified letter (return receipt requested), said letter having first been approved by Plaintiffs' attorneys, will be sent to the last known address of each such person, informing him or her in concise and easily understandable terms of his or her right to reapply for AFDC benefits and that he or she is owed an award of retroactive assistance, with the amount specified by the New York State Department of Social Services, that such amount may be claimed by contacting the local Social Services District, at a specified address, within seventy-five (75) days from the receipt of said letter, and that if such a claim is not made within seventy-five (75) days, said award of retroactive payment will be forfeited.

(b) If the local Social Services District has not received such a request for the award of retroactive payments within seventy-five (75) days from the date of the returned receipt, the right to said award of retroactive payment shall be forfeited.

8. That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, be and are hereby enjoined, ordered, and directed to communicate immediately with each local Social Services District in the State of New York, by formal Administrative Letter, such letter having first been approved by Plaintiffs' attorneys, to

inform each such District of the contents of this Order, and to order each such District to comply with the provisions of this Order.

9. That within fifteen (15) days from the date of this Order, Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, shall submit to this Court and to the Plaintiffs' attorneys a detailed statement as to the method for effectuating the relief required herein. Any disputes between the parties as to whether the procedures and steps outlined by the Defendants will fulfill the requirements of this Order shall be resolved by this Court.

10. That costs of this action be and hereby are taxed against Defendants and in favor of Plaintiffs.

11. That attorneys' fees be and hereby are taxed against Defendants and in favor of Plaintiffs.

12. That this Court shall retain continuing jurisdiction over this cause for all purposes.

Dated:

Enter:

JAMES L. OAKES,
USCJ.

JOHN O. HENDERSON,
USDJ.

JOHN T. CURTIN,
USDJ.

Proposed Amendment to Proposed Order.

IN THE UNITED STATES DISTRICT COURT

For the Western District of New York

(Title Omitted In Printing.)

Plaintiffs submit the following Proposed Amendment to their Proposed Order. The amendment would replace Paragraphs 6 and 7 of the Proposed Order with the following:

"(6) That Plaintiffs' First, Second, and Third Causes of Action be and are hereby dismissed, except that with respect to Plaintiffs' Second Cause of Action, Defendants New York State Department of Social Services and its Commissioner Abe Lavine, be and hereby are enjoined, ordered and directed to provide each recipient of Home Relief with a fair hearing (hereafter a "hearing") prior to requiring compliance with the New York Work Rules and to send a letter to each recipient of Home Relief who has been declared employable pursuant to the New York Work Rules, which shall contain the following statement in both English and Spanish:

"When you were classified as an unemployed employable recipient on ..... (date), the letter which notified you of your classification did not inform you that you had the right to request a hearing if your disagreed with your classification as an unemployed employable. This letter is to inform you of your right to such a hearing. If you feel that you are not employable because of your age or health, or because you have to take care of someone who is either ill or a child, or because you are in school or a training program, or if you have any other reasons you feel you are not employable, fill out the enclosed form requesting a hearing and return it to this Department in the enclosed prepaid self-addressed envelope.

Proposed Amendment to Proposed Order.

'If you request a hearing within seven days of receipt of this notice you will not be considered employable until you receive a decision from your hearing officer. That decision will inform you of what you must do thereafter. In the meantime, you will receive your check in the mail.'

Defendants New York State Department of Social Services and its Commissioner Abe Lavine are further enjoined, ordered and directed to enclose with such letter a form requesting a hearing, together with a pre-paid self-addressed envelope. Said form shall state in both English and Spanish:

'I . . . . . hereby request a
(name)
hearing to contest my classification as an unemployed employable recipient. I feel I am not employable because
. . . . . .
. . . . . .'

Further, Defendants New York State Department of Social Services and its Commissioner are hereby enjoined, ordered and directed to require each local Social Services District, when notifying any recipient of Home Relief of his or her classification as an unemployed employable recipient, to include in such letter the following statement in both English and Spanish:

'If you disagree with your classification as an unemployed employable recipient, you may request a hearing. If you feel that you are not employable because of your age or health, or because you have to take care of someone who is either ill or a child, or because you are in school or a training program, or if you have any other reasons to feel you are not employable, fill out the enclosed form requesting a hearing and return it to this Department in the enclosed self addressed envelope.'

'If you request a hearing within seven days of the receipt of this notice you need not comply with this letter until you receive a decision from your hearing officer. That decision will inform you of what you must do thereafter. In the meantime, you will receive your check in the mail.'

Defendants New York State Department of Social Services and its Commissioner Abe Lavine are further enjoined, ordered, and directed to require each local Social Services District to enclose with the aforesaid letter notifying a recipient of Home Relief of his or her classification as an unemployed employable recipient, a form requesting a hearing, together with a pre-paid self addressed envelope. Said form shall state in both English and Spanish:

'I . . . . . hereby request a
(Name)
hearing to contest my classification as an unemployed employable recipient. I feel I am not employable because

. . . . . .
. . . . . .'

"(7) That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine, are hereby enjoined, ordered and directed to award, within one hundred twenty (120) days from the issuance of this Order, or in the alternative are hereby enjoined, ordered, and directed to require each local Social Services District to award, within one hundred twenty (120) days from the issuance of this Order, to each applicant for or recipient of Home Relief during the period from July 1, 1971 until the date of this Order who was denied Home Relief assistance or whose Home Relief Assistance was terminated pursuant to the New York Work Rules without having been informed that he or she had a right to a hearing prior to compliance with such Rules

n which to contest his or her classification as an unemployed employable recipient, those benefits of which such erson was deprived pursuant to the implementation of the lew York Work Rules. Such award of retroactive payments hall consist of all benefits to which each such person would ave been entitled but for the operation of the New York Vork Rules, and shall not be limited to benefits for the hirty (30) day period of ineligibility under the New York Vork Rules. Where any such person, after having been enied Home Relief or after having had Home Relief enefits terminated, did not reapply for Home Relief until ore than thirty (30) days after such denial or termination f Home Relief, or did not reapply at all, such award of etroactive payments shall be for the entire period during hich such person received no assistance, unless it can be own to the satisfaction of this Court that such person ould not have been eligible for Home Relief for reasons ther than the application of the New York Work Rules. uch award of retroactive benefits will be mailed to such erson currently receiving Home Relief within one hundred enty (120) days from the issuance of this Order with an xplanatory Letter, said letter having first been approved by laintiffs' attorneys. Any award received pursuant to this aragraph shall not be deemed income or resources for purses of computing eligibility for public assistance. For such ersons not presently receiving Home Relief:

(a) A certified letter (return receipt requested), said letr having first been approved by Plaintiffs' attorneys, will sent to the last known address of each such person, inrming him or her in concise and easily understandable rms of his or her right to reapply for Home Relief benefits d that he or she is owed an award of retroactive assistance, th the amount specified by the New York State Departent of Social Services, that such amount may be claimed by ntacting the local Social Services District, at a specified

address, within seventy-five (75) days, said award of retroactive payment will be forfeited.

(b) If the local Social Services District has not received such a request for the award of retroactive payments within seventy-five (75) days from the date of the returned receipt, the right to said award of retroactive payment shall be forfeited."

Add a new paragraph 8 to read as follows:

"(8) That Defendants New York State Department of Social Services and its Commissioner, Abe Lavine be and are hereby enjoined, ordered and directed to award, within one hundred twenty (120) days from the issuance of this Order, or are enjoined, ordered and directed to require each local Social Services District in the State of New York to award, within one hundred twenty (120) days from the issuance of this Order, to each current or former recipient of Home Relief who, from July 1, 1971 until the date of this Order, without first being given a hearing on the question of the correctness of his or her classification under the New York Work Rules, expended money to comply with the requirements of the New York Work Rules, such money as was expended by each such recipient to comply with the requirements of the New York work Rules.

To effectuate this Order Defendants New York State Department of social Services and its Commissioner, Abe Lavine, are hereby enjoined, ordered and directed to send a certified letter (return receipt requested), said letter first having been approved by Plaintiffs' attorneys, to each current or former recipient of Home Relief, who during the period from July 1, 1971 until the date of this Order, was declared "employable" pursuant to the New York Work Rules, notifying such recipient of his or her right to apply to the local Social Services District for compensation for ex-

penditures incurred to complying with the New York Work Rules and that if such application is not made within seventy five (75) days, the right to said compensation shall be forfeited.

If the local Social Services District has not received such an application within seventy five (75) days from the date of the returned receipt, the right to said compensation shall be forfeited.

As to each such current or former recipient of Home Relief who contracts the local Social Services District to apply for such compensation, a representative of the local Social Services District shall meet with such recipient to determine the amount of money expended, and shall authorize the payment of such amount to the recipient."

And renumber Paragraphs 8, 9, 10, 11 and 12 as Paragraphs 9, 10, 11, 12 and 13, respectively.

Dated: New York, New York

Respectively submitted,

LEGAL AID BUREAU OF
BUFFALO, INC.,
NEIGHBORHOOD LEGAL SERVICES,
Michael A. O'Connor, *Of Counsel,*
481 Swan Street,
Buffalo, New York 14204.

/s/ DENNIS R. YEAGER,
Mayer G. Freed,
423 West 118th Street,
New York, New York 10027,
(212) 866-8591.

Notice of Appeal of State Appellants.
Notice of Appeal of Erie County Defendants.

Order Dated October 18, 1972 Amending Prior Order.

[Printed in full in Appendix to Jurisdictional statement of State appellants].

Notice of Appeal of State Appellants.

[Printed in full in Appendix to Jurisdictional statement of State appellants].

Notice of Appeal of Erie County Defendants.

UNITED STATES DISTRICT COURT

Western District of New York

(Title Omitted in Printing.)

Notice is hereby given that the Erie County Department of Social Services and its Commissioner, George G. Sipprell, Defendant above named, hereby appeal to the Supreme Court of the United States from the final order and judgment entered in this action on August 25, 1972, holding New York Social Services Law, Sec. 131 (4) and 350-k, and the Rules of the Department of Social Services adopted pursuant thereto to be in conflict with Section 402 (a) (10) of the Social Security Act of 1935, as amended, 42 U. S. C. Section 602 (a) (10), and to be pre-empted by Sections 402 (a) (19)

and 430 *et seq.* of the Social Security Act of 1935, as amend-
ed, 42 U. S. C. Sec. 602 (a) (19) and 603 *et seq.* and to be un-
constitutional under the Supremacy Clause of Article VI of
he Constitution of the United States, insofar as they are ap-
lied to applicants for or recipients to Aid to Families with
Dependent Children, and dismissing plaintiffs' First,
econd, and Third Causes of Action. Defendant-Intervenors
ppeal from each and every part of said order and judgment,
xcept that part thereof which dismissed plaintiffs' First,
cond and Third Causes of Action.

This appeal is taken pursuant to 28 U. S. C. Section 1253.

ted: Buffalo, New York,
October 10, 1972.

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Erie County Attorney,
Attorney for Defendants
Erie County.

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Attorney for Defendant, State Departments and State Officers,
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Philip C. Pinsky,
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Syracuse, New York 13202.

Notice of Appeal of Onondaga County Appellants.

[Printed in full in Jurisdictional Statement of Onondaga County appellants].

Letter Dated January 15, 1973.

Office of the Clerk
Supreme Court of the United States
Washington, D. C. 20543

January 15, 1973

Albany, N. Y.

Honorable Louis J. Lefkowitz
Attorney General of New York
Capitol—Department of Law
Albany, New York 12224

RE: *N. Y. State Dept. of Social Services v. Dublino, No. 72-792 and Onondaga County Dept. of Social Services v. Dublino, No. 72-802*

Dear Sir:

The Court today took the following action in the above cases:

"The motion of appellees for leave to proceed *in forma pauperis* is granted. In these cases further consideration of the question of jurisdiction is postponed to the hearing of the cases on the merits. The cases are consolidated and a total of one hour is alloted for oral argument."

Enclosed are memorandums describing the time requirements and procedures under the Rules.

The additional docketing fee of $50, Rule 52 (a) is due and payable in No. 72-792.

Very truly yours,

MICHAEL RODAK, JR., *Clerk,*
By Helen K. Loughran,
(Mrs.) Helen K. Loughran,
Assistant Clerk.

Air Mail
cc: Phillip C. Pinsky, Esq.,
Gregory Stamm, Esq.

-792
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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

and

Appellants,

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Intervenors-Appellants,

against

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

STATEMENT AS TO JURISDICTION ON BEHALF OF APPELLANTS NEW YORK STATE DEPARTMENTS OF SOCIAL SERVICES AND LABOR AND THEIR COMMISSIONERS

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RESPONSE NOT PRINTED

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IN THE

Supreme Court of the United States

October Term, 1972

No. .....

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Intervenors-Appellants,

against

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

On Appeal From the United States District Court for The Western District of New York

STATEMENT AS TO JURISDICTION ON BEHALF OF APPELLANTS NEW YORK STATE DEPARTMENTS OF SOCIAL SERVICES AND LABOR AND THEIR COMMISSIONERS

Pursuant to Rules 13 (2) and 15 of the Rules of the Supreme Court of the United States, the appellants, the New York State Department of Social Services, its Commissioner, Abe Lavine, the New York State Department of Labor (erroneously designated as the Department of Industrial Relations in the caption of the complaint), and its Commissioner, Louis L. Levine, file this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review the final judgment in question, and should exercise such jurisdiction in this case.

Opinion Below

The opinion of the Judges in this case, sitting as a statutory Court of three judges, written by the Hon. JOHN T. CURTIN, Judge of the United States District Court for the Western District of New York, and concurred in by the Hon. JAMES OAKES, Associate Judge of the United States Court of Appeals for the Second Circuit, and by the Hon. JOHN O. HENDERSON, Judge of the United States District Court for the Western District of New York, sustained the complaint in part, holding that New York Social Services Law, §§ 131(4) and 350-k, as enacted by Chapters 101 and 102 of the New York Laws of 1971, and the Rules of the New York State Department of Social Services, adopted pursuant thereto, conflict with section 402(a) (10) of the Social Security Act of 1935, as amended (42 U. S. C. § 602 [a] [10]), and are preempted by sections 404 (a) (19) and 430 *et seq.* of the Social Security Act of 1935, as amended (42 U. S. C. §§ 602[a] [19] and 630 *et seq.*), and are, therefore, unconstitutional under the Supremacy Clause of Article VI of the Constitution of the United States, insofar as the New York State statutes and rules referred to are

applied to applicants for and recipients of Aid to Families with Dependent Children (AFDC). The judgment enjoined further implementation of the statutes and rules as to such persons. The decision and judgment entered thereon dismissed those causes of action stated in the complaint which alleged that the State statutes and rules conflicted with the Thirteenth and Fourteenth Amendments to the Constitution of the United States, except that the judgment directed that, as to Home Relief recipients (the State's general relief category which is not Federally assisted), such persons be specifically notified of their right to a fair hearing on the issue of employability.

The opinion of the Court is set out in the Appendix hereto and marked as Appendix "A". The final judgment appealed from is set out in the Appendix hereto and marked as Appendix "B". There is as yet no citation to the opinion. A motion to amend the judgment, made by plaintiffs, was granted to a limited extent and an order amending the judgment was entered October 18, 1972, a copy of which is attached hereto as Appendix "C".

Jurisdiction

The appeal herein is from a final judgment made and entered in the United States District Court for the Western District of New York by a specially constituted three-judge panel convened therein under United States Code, §§ 2281 and 2284. The judgment holds the "New York Work Rules", comprising sections 131(4) and 350-k of the New York Social Services Law, as added by Chapters 102 and 101 of the New York Laws of 1971, respectively, and the rules of the Department of Social Services, adopted pursuant thereto and in implementation thereof, (18 N. Y. C. R. R., § 385.1 *et seq.*) unconstitutional insofar as they

apply to applicants for and recipients of Aid to Families with Dependent Children. They were found to be unconstitutional on the ground that the State statutes and rules conflict with the Federal statutes relating to the Work Incentive Program (WIN) (42 U. S. C. §§ 602(a)(10), 602(a)(19) and 630 *et seq.*) and are thus in violation of the Supremacy Clause of Article VI of the Constitution of the United States. The judgment enjoins the defendants from further implementation of the Work Rules as to AFDC applicants and recipients.

The complaint sought declaratory and injunctive relief against enforcement of Chapters 101 and 102 of the Laws of 1971, and the rules adopted pursuant thereto, alleging that the statutes violated the Thirteenth Amendment to the Constitution of the United States, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and conflicted with Federal statutes in violation of the Supremacy Clause of Article VI of the Constitution. The New York statutes and rules provide for the referral of persons, deemed to be employable and who are recipients of public assistance, to the office of the New York State Division of Employment for job referral and manpower services, required semi-monthly reporting for such referral and that recipients pick up assistance checks at the same employment office, and further provide for public works employment for persons not placed in regular employment.

The final judgment granting the relief sought in the complaint was made and entered August 25, 1972. Notice of Appeal on behalf of the State defendants was filed on September 28, 1972 in the United States District Court for the Western District of New York (a copy of which notice is set out in the Appendix hereto and is marked as Appendix "D").

The Supreme Court of the United States has jurisdiction to review by direct appeal the final judgment above cited, pursuant to the terms of 28 United States Code, § 1253.

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Dandridge* v. *Williams*, 397 U. S. 471 (1970), and *Snell* v. *Wyman*, 393 U. S. 223 (1968).

Statutes Involved

New York Social Services Law (McKinney's Consolidated Laws of New York, Vol. 52-A), section 131(4), as amended by Chapters 102 and 298, § 5 of the New York Laws of 1971, provides:

"4. No assistance or care shall be given to an employable person who has not registered with the nearest local employment agency of the department of labor or has refused to accept employment in which he is able to engage.

"A person shall be deemed to have refused to accept such employment if he:

a. Fails to obtain and file with the social services district at least once in every two-week period a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

b. wilfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

c. wilfully fails to report to such office the result of a referral to employment, or

d. wilfully fails to report for employment. Such wilful failures or refusal as above listed shall be re-

ported immediately to the social services district by such employment office.

"For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

"Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department."

(Subdivision 5 referred to above provides for referrals by the Division of Employment for vocational training.)

New York Social Services Law, § 350-k, as added by Chapter 101 of the New York Laws of 1971, provides for public works project employment for employable recipients of AFDC who are not able to be placed in regular employment. The full text of Chapter 101 of the Laws of 1971 is set out as Appendix "E" hereto.

Question Presented

Where, by determination of the United States Secretary of Labor, the Federal program for work and training referral of public assistance recipients (WIN) is not in operation in all welfare districts of the State and where in these districts in which the program is in operation, the opportunities for referral of public assistance recipients are limited by the operation of the Federal law to only a fraction of the unemployed employable public assistance recipients, and Congress has not specifically stated that the WIN Program is the exclusive vehicle for job referral of such persons, can the States adopt programs and requirements for work referral and for public works employment of persons not eligible for referral under the Federal statute or for whom there are no employment or training positions available under the Federal program?

Statement of the Case

Plaintiffs, suing on behalf of themselves and their minor children, commenced this action seeking to have Chapters 101 and 102 of the New York Laws of 1971, and the rules promulgated pursuant thereto, declared unconstitutional, alleging that they violated the Thirteenth Amendment to the Constitution of the United States, the Due Process and Equal Protection Clauses of the Fourteenth Amendment and so conflicted with the Federal Social Security Act of 1935, as amended, that they were in violation of the Supremacy Clause of Article VI of the Constitution. The complaint sought an injunction restraining enforcement and implementation of the statutes.

The action was commenced by Order to Show Cause on July 1, 1971, the effective date of the statutes. Temporary

restraining orders were signed by the Court as to the five original plaintiffs and, after the action had been determined by the Court to be a class action, temporary restraining orders were granted to approximately fifty other members of the plaintiff class on motions by plaintiffs' attorneys. Plaintiffs so represented reside in Erie, Onondaga, Cattaraugus, Broome, Orleans, Wyoming, Sullivan, Albany, Rensselaer, Rockland and New York Counties. The plaintiffs, on whose behalf the orders were issued, thus represent a geographic cross-section of the State and presumably also the range of problems arising out of the implementation of the State Work Rules.

The statutes here in question had been enacted by the Legislature of the State of New York as a part of a welfare reform program recommended by the Governor in a Special Message to the Legislature in March, 1971. In that Message, Governor Rockefeller stated, as to the general issues involved in the proposed legislation:

> "* * * I am recommending a complete reorganization conceptually and structurally, of the welfare program for New York State in order to give greater opportunity and incentive to the individual to achieve independence, self-sufficiency, and human dignity.
>
> * * *
>
> "My purpose in recommending far-reaching reorganizational proposals is to see to it that we not only continue to meet the basic needs of those who cannot do for themselves, but that we also encourage the young and able-bodied, temporarily in need of assistance through no fault of their own, to achieve the education and the skills, the motivation and the determination that will make it possible for them to become increasingly self-sufficient, independent citizens who can contribute to and share in the responsibility for their families and our society."

As to the specific legislative proposals which became chapters 101 and 102 of the Laws of 1971, the Governor's Message continued:

> "Work is essential to a healthy individual and a healthy society.
>
> "Welfare should be a bridge to work for those able to work, as well as a shield against want.
>
> "Welfare benefits should aid those who work and need supplemental help."

The welfare reform program was proposed for broad benevolent social purposes and was not a repressive measure designed solely to alleviate the State's fiscal crisis, as alleged by the plaintiffs.

Subsequent to the enactment of the statutes, the State Department of Social Services adopted rules and regulations for the implementation of the statutes, and advised the local departments in the social services districts of the State as to procedures, both in writing and in meetings with employees of the local departments. The statutory definition of employable was further defined by the State Department of Social Services for the guidance of the local departments in making determinations as to employability under the statutes. That definition provides:

> "All ADC or HR applicants or recipients age 16 and over shall be deemed employable except by reason of:
>
> (a) Full-time employment;
>
> (b) Attendance at school full-time for a minor other than an emancipated minor;
>
> (c) Attendance full-time in grade or high school for an emancipated minor;
>
> (d) Full-time satisfactory participation in an approved program of vocational training or rehabilitation, which shall include but not be limited to particips-

tion in the Work Incentive Program and a two-year college program with specific vocational objective;

(e) Part-time employment to the extent permitted by medical verification, or because of inability to secure adequate care for children or other incapacitated members except on a part-time basis;

(f) Mental or physical illness or incapacity which has been medically verified to be of a significant or substantial nature so as to prevent such person from engaging in employment; age shall be a basis of unemployability only when it has been verified that the individual would be potentially hazardous to himself or others with whom he is associated; and persons with a history of drug addiction shall be deemed employable only when determined medically to be free of drug use, or participating in a methadone maintenance program or rehabilitation program; or,

(g) The need of such person to provide full-time care for other members of such person's household who are verified to be wholly incapacitated or who are children, and for whom required care is not otherwise available, notwithstanding diligent efforts by such person and the social services district to obtain services or the assistance of others to provide such care."

In determining whether the mother's presence in the home is essential, the local social services district was explicitly instructed to consider:

"(1) The nature and extent of the incapacity; what effect the mother's absence would have on the health and welfare of the incapacitated person; whether other services or the assistance of others is available, and whether such alternative plans would adversely affect the incapacitated person.

"(2) The number of children in the home, their respective ages, the existence of illness, handicap or special needs; what effect the mother's absence

would have on the health and welfare of the children; whether an adequate plan of child care is available; and whether such plan of child care would adversely affect the health and welfare of children."

If a public assistance recipient contests his classification as employable, he is entitled to a fair hearing on that issue, without having to first refuse a referral for employment and risk termination or grant reduction for noncompliance.

As to the public works project portion of the legislation, an Administrative Letter of the State Department of Social Services was sent to local social services commissioners relative to the implementation of the legislation. The purpose of the statute was set forth in that letter:

"It is anticipated that employment on Public Work Projects will have a positive influence on the attitudes and morale of the participants and will also have a beneficial effect on their families.

"Public Work Projects shall provide the following:

"(a) Work experience in preference to inactivity, while also providing work training for the inexperienced;

"(b) Meaningful work for the recipient, while providing meaningful service to the public;

"(c) The conservation and/or the development of work skills in order to maintain recipients' employability, thereby enabling participants to move from the Public Works Projects into the regular labor market."

It should be noted that the provisions of section 350-k of the Social Services Law, which provide for public work project participation by AFDC recipients, were not implemented because of an objection by the HEW Regional Commissioner which indicated that such projects would not be approved for Federal aid. The only public work proj-

ect provisions which were implemented were those for Home Relief recipients and, although Social Services Law, § 164 did not include procedural safeguards as did section 350-k, the regulations of the Commissioner of Social Services relative to section 164 included the same safeguards as had been statutorily provided for the AFDC recipients.

Subsequent to the initial implementation of chapters 101 and 102, problems which arose in connection therewith resulted in changes in the law and regulations. After the first six months of the operation of the program, the Department of Social Services adopted a new regulation to provide an exemption from semi-monthly reporting requirements for any person with a transportation hardship. In such case, either the local social services district may arrange transportation for the recipient or provide for reporting by mail. Additionally, the 1972 Legislature made two statutory changes. It exempted from reporting requirements persons engaged in full-time training and vocational rehabilitation programs (Chapter 683, Laws of 1972) and provided that shelter allowances would be paid monthly, rather than as a part of the semi-monthly assistance payments (Chapter 685, Laws of 1972).

A perspective on the development of the program is found in the Report of the Sub-Committee on Welfare Reform of the New York State Temporary Commission to Revise the Social Services Law, published in January, 1972. That report observes "in a time of slump, the fact is that jobs are being developed and placements of relief recipients are being made." The Commission found that certain changes should be made in the law and, in fact the two statutory clauses which were adopted in 1972 by the Legislature and referred to above were a part of the legislative recommendations of the Commission.

The District Court, in its decision, rejected plaintiffs' contention that the statutes violate the Thirteenth and Fourteenth Amendments to the Constitution of the United States. As to the contention as to the Thirteenth Amendment, the Court observed: "Requiring employable persons on public assistance to engage in employment, if available, in the absence of circumstances different from those presented in this case, is entirely proper."

As to the contentions as to the Fourteenth Amendment, the Court stated:

> "A statutory classification in the area of social welfare, however, is consistent with the Equal Protection Clause if it is 'rationally based and free from invidious discrimination,' see *Dandridge* v. *Williams*, 397 U. S. 471 (1970). The Work Rules reflect a judgment by the state's Executive and Legislature that a drastic revision of the state's welfare program was in order. This court cannot say that the Rules are without a rational basis under the circumstances."

As to the Due Process Clause violation arguments, the Court found no denial of due process, although it did find that recipients needed to be advised of their rights to fair hearings and the Court directed that suitable means of notifying HR recipients of their right to fair hearings on the issue of employability be implemented within thirty days after filing of the decision.

Although upholding the statute as against claims of unconstitutionality under the Thirteenth and Fourteenth Amendments, the Court did hold the State statute to be in conflict with the Federal Social Security Act, specifically the WIN (Work Incentive) Program, and thus to be in violation of the Supremacy Clause of Article VI of the Constitution of the United States.

In so doing, the Court relied primarily upon a decision of the United States District Court for the Eastern District of Virginia (*Woolfolk* v. *Brown*, 325 F. Supp. 1162 [1971], affd. 456 F. 2d 652 [4th Cir. 1972]), for although the Court also cited an Oregon case (*Bueno* v. *Juras*, ____ F. Supp. ____ [1971]), the Oregon Court had relied solely upon the *Woolfolk* case for its decision. A petition for certiorari was filed by the defendants in the Virginia case and certiorari was denied on October 10, 1972 by this Court. That case, however, which involved specific questions as to specific individuals residing in an area where the WIN Program was in operation and who had not been found to be inappropriate for WIN referral prior to referral for employment under the State program, has been applied as a general principle of law by the Court below in this case to invalidate programs as to a broad general class of persons, including those residing in areas not within the WIN program.

The Question is Substantial

The sole issue raised by this appeal is whether Congress, in enacting the WIN Program and in providing limited funding for it, intended that this very limited work referral program should supersede and preempt State programs of broader supplemental application. The State of New York does not take the position that persons eligible for and referable to WIN should not be so referred. In fact, the witnesses for the social services departments State and local, all stated that where public assistance recipients were eligible for WIN referrals and where there were WIN slots available for them, such recipients must be referred to WIN and not through the State program. In intention and operation, therefore, the State program was intended to supplement WIN.

The substantiality of the question so presented is apparent from a statistical comparison of the operation of the Federal and State programs. In New York, the WIN Program is restricted geographically in the sense that it exists in only 12 of the State's 64 social services districts. The actual designation of only 12 districts in which the WIN Program is to operate was made by the United States Secretary of Labor. The request of the New York State Department of Social Services that the Federal Labor Secretary expand the WIN program, by designating additional social services districts for the program, has been denied. Unlike New York State's Social Services Law work referral provisions, the WIN program by Federal design is restricted to specific areas of the State and as such is available only to very limited numbers of AFDC recipients.

The 12 social services districts which have a WIN Program in operation are also limited to a total slot allocation of 16,800 persons. Initially, when the Program was implemented in New York in 1968 there were 14,800 slots authorized. In April, 1972, the slot allocation was increased to the present level of 16,800. Under the revised WIN Program, effective July 1, 1972, it is estimated that there are 75,000 registered AFDC recipients who are potential WIN participants but the Program will not have the capacity to accommodate more than a fraction of this number. Clearly then, the State must turn to other manpower programs, such as the work referral program here at issue, if the State is to meet its responsibilities, mandated under the Federal Social Security Act, to help welfare recipients become self-supporting. The disparity between the effectiveness and scope of the Federal and State programs is apparent from the fact that in the period from

January through June, 1972 there were a total of 2,657 job placements under the WIN Program, as compared with a total of 5,323 placements in the same period under the State's work referral program, even though the WIN Program is operating in those districts having 90% of the total number of welfare recipients in the State.

In fiscal 1971, the New York State Department of Social Services referred 17,511 individuals for participation in the WIN Program. However, in that fiscal year, the Federal government allowed only 9,600 opportunities for enrollment in the WIN Program in New York State. Since the State work requirement was enacted, referrals to the State Employment Service increased twelvefold. Between November, 1971 and June, 1972, there were approximately 125,000 referrals under the work referral program. Compare that figure with the yearly total referrals under the Federal WIN Program:

Fiscal Year	68-69	9,127
	69-70	16,992
	70-71	17,511

From those figures it can be seen that, as a matter of fact, the WIN Program does not, in operation, occupy the entire field of work referral, nor does it occupy even a major percentage of that area.

Consequently, it can be readily seen that the question of whether or not the Congress intended that the Social Security Act provisions preempt the entire field of work referral present a very substantial Federal issue in the operation of the public assistance programs of both the State and Federal governments.

Not only do the practical effects of the decision of the Court below, holding that the Federal WIN provisions preempt the field of work referral and that all comparable state laws are therefore invalid, create a substantial Federal issue, but such an issue is also created as a matter of law, since this Court has held in the past that the Social Security Act does not preempt the entire field of welfare legislation. In *Snell* v. *Wyman* (281 F. Supp. 853 [S. D. N. Y., 1968], affd. without opinion 393 U. S. 323), the Courts considered a New York statute which provides for the recovery of previously paid welfare benefits from assets of recipients, such as equities in real estate, bank accounts, proceeds of lawsuits or insurance policies, etc. The Court there held that the Federal Social Security Act did not prohibit such legislation, either directly or by implication, and that the State statute was not rendered invalid simply because it did not accord with the social philosophy of either the plaintiff or the Court (281 F. Supp. at p. 863).

Less than two years ago, this Court specifically held that the Federal Social Security Act did not preempt the field of welfare legislation, even in areas covered by the Federal act itself (*Dandridge* v. *Williams*, 397 U. S. 471). In that case, holding valid a Maryland statute which set a maximum limit on the number of children in a family for which AFDC would be paid, this Court held as to the power of the States to legislate (397 U. S., p. 478):

> "In *King* v. *Smith*, *supra* (392 U. S. 309), we stressed the States' 'undisputed power,' under these provisions of the Social Security Act, 'to set the level of benefits and the standard of need.' *Id.*, at 334. We described the AFDC enterprise as 'a scheme of cooperative federalism,' *id.*, at 316, and noted carefully that '(t)here is not question that States have

considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.' *Id.*, at 318-319. • • • Thus the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds."

In view of the holdings in the above cited cases that the Federal Social Security Act does not preempt the entire field of welfare legislation, the question presented by this case, that is, the power of the States to enact work referral legislation parallel to but not superseding the WIN program, is indeed substantial and warrants the consideration of this Court.

In order for a Federal statute to preempt a permissible area of State legislation, the Courts have uniformly held that there must be a clear, express, and unequivocal expression of intent to do so. (See, *e.g.*, *Engineer* v. *Chicago, R. I. & R. R. Co.*, 382 U. S. 423 [1966]; *Schwartz* v. *Texas*, 344 U. S. 199 [1952]; *Chrysler Corp.* v. *Rhodes*, 416 F. 2d 319 [1st Cir., 1969]; *New Mexico Board of Examiners* v. *Roberts*, 70 N. M. 90, 370 P. 2d 811 [1962].)

The Federal Social Security Act does not expressly preempt the field of social welfare legislation. This Court has so held. Nor is there any clear and unequivocal implied intent to do so. The State and Federal programs are not mutually exclusive. Neither one acts to the exclusion of the other; they are in fact complementary, with referrals under the Federal WIN Program, where available, taking precedence over those under the State program.

The future direction that these programs of "cooperative federalism" will take will depend in great measure upon this Court's action in this case. The question presented to the Court is, therefore, substantial and warrants the consideration of this Court.

CONCLUSION

The Court should take jurisdiction of this appeal.

Dated: October 20, 1972.

Respectfully submitted,

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APPENDIX "A"

Opinion of the Court

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DOLORES DUSLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Defendant-Intervenors.

Civil 1971-306.

Before Oakes, *Circuit Judge*, Henderson, *Chief Judge*, and Curtin, *District Judge*.

Appearances:

Legal Aid Bureau of Buffalo, Inc. (Michael A. O'Connor, of Counsel) and National Employment Law Project, New York (Dennis R. Yeager, E. Richard Larson, and Mayer G. Freed, of Counsel), for the Plaintiffs.

Louis J. Lefkowitz, Attorney General of the State of New York (Jean M. Coon, Assistant Attorney General, of Counsel), for the Defendants.

Leonard C. Koldin, Onondaga County Welfare Attorney, for the Defendant-Intervenors.

The National Assembly for Social Policy and Development, Inc. (Elizabeth Wickenden, of Counsel), The National Welfare Rights Organization, City Wide Coordinating Committee of Welfare Organizations, and The Upstate Welfare Rights Organization (Adele M. Elong, Steven J. Cole, Kenneth P. Neiman and Henry A. Freedman, of Counsel), as Amicii Curiae.

CURTIN, *District Judge:*

This is an action challenging the constitutionality of various provisions of the New York Social Welfare Law and regulations of the state Department of Social Services, all enacted or adopted within the last year and commonly known as the New York Work Rules. The contested provisions are Sections 131(4) and 164, as amended,[1] and 350-k[2] of the Social Welfare Law and Department of Social Services Administrative Letters, Numbers 71 PWD-34[3] and 71 PWD-43.[4] In brief, the Work Rules establish a presumption that certain recipients of public assistance under various state welfare programs are employable and require such recipients to report semi-

monthly to the New York State Employment Service to pick up their assistance checks and accept referral to employment positions, including employment on public works projects. Relying on Title 42, United States Code, Section 1983, and its jurisdictional complement, Title 28, United States Code, Section 1343, the plaintiffs seek a judgment declaring the Work Rules violative of the Constitution in numerous respects, and an injunction restraining the enforcement of the Rules. Their complaint's demand for damages was ignored in the extensive briefs of the parties and is considered abandoned.

The named plaintiffs are recipients of public assistance under various general and particular categories of assistance[3] and proceed as representatives of a class composed of all other New York residents similarly situated. Temporary restraining orders directing the defendants to issue plaintiffs' assistance checks by mail and restraining enforcement of the Work Rules generally have been issued in the case of the named plaintiffs and a number of additional intervening plaintiffs, each of whom submitted affidavits alleging particular hardships as a consequence of compliance with the Work Rules.

The Work Rules were enacted in response to a March, 1971 special message from Governor Rockefeller directing the New York Legislature to consider means of transferring the able-bodied from the welfare rolls to payrolls.[4] Section 131(4) of the Social Welfare Law was amended to provide that employable welfare recipients, effective July 1, 1971, must pick up their grants in person semimonthly at a designated office of the Division of Employment of the State Department of Labor. The amendment

includes as presumptively employable all persons 16-64 years of age except for reason of

> illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor . . .; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the appropriate social services department to obtain others to provide such care.

In addition to establishing a system of referrals for employment in the regular economy, the Work Rules, Section 350-k, permit the establishment of public works projects in social services districts.[7] Failure to report and participate in the operation of the Work Rules deprives one of eligibility for public assistance.

The plaintiffs contend that the Work Rules compel involuntary servitude in violation of the Thirteenth Amendment, deprive persons subject to the Work Rules of due process and equal protection in violation of the Fourteenth Amendment, and conflict with provisions of the federal Social Security Act[8] in violation of Article 6, Clause 2, the Supremacy Clause of the Constitution.

Turning to the plaintiffs' last argument first, their position is that the application of the Work Rules to AFDC recipients is improper since to do so is to impose conditions of eligibility for assistance in addition to those set

out in the pertinent federal statutes, see Title 42, United States Code, Sections 602 *et seq.*, and thereby violate the statutory direction of Section 602(a)(10) that "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." The plaintiffs further argue that the Work Rules are in conflict with and preempted by the federal Work Incentive Program (WIN),[9] at least with respect to persons in federally reimbursed assistance programs such an APDC.

In *King* v. *Smith*, 392 U. S. 309 (1968), *Townsend* v. *Swank*, 404 U. S. 282 (1971), and *Carlson* v. *Remillard*, 40 U. S. L. W. 4624 (U. S. June 7, 1972), the Court held that "a state eligibility standard that excludes persons eligible for assistance under Federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." *Townsend*, at 286. Plaintiffs point to Section 131(4) of the New York Social Welfare Law and its implementing regulation, 18 N. Y. C. R. R. § 385.6, which provide for the termination of assistance and/or a thirty-day penalty period upon a recipient's failure to comply with the Work Rules as inconsistent with Section 602(a)(10) of the Social Security Act. The state's only answering argument is that the Rules serve merely to implement Section 602(a)(8) of the Act. This section, according to the state, permits the state to disregard, in determining family need, the needs of any person who in the preceding thirty days or more has either deliberately reduced earning capacity, quit a job, or refused to accept employment offered through the State Employment Service. This, however, is a misreading of the statute. Section 602(a)(8) permits the state, where the recipient

fails to cooperate in the ways described, only not to disregard the first thirty dollars of earned income and one-third of the balance of the monthly earnings. Clearly the Work Rules go much further—they permit the denial of public assistance. As to AFDC eligibles, then, the Work Rules are in conflict with Section 602(a)(8).

Plaintiffs' second argument, that the Rules are preempted by the WIN program, has been successful in recent attacks on analogous state legislation in Virginia, see *Woolfolk v. Brown*, 325 F. Supp. 1162 (E. D. Va. 1971), aff'd, 456 F. 2d 652 (4th Cir. 1972), and Oregon, see *Bueno v. Juras*, ____ F. Supp. ____ (D. Ore. 1972). Both cases describe in detail the statutory and regulatory background of the WIN program, but a brief resume of the program's highlights may be appropriately repeated.

The WIN program, part of the 1967 amendments to the Social Security Act, is administered by HEW and the Department of Labor. State welfare agencies evaluate AFDC recipients to determine which are "appropriate" for referral to WIN. See Title 42, United States Code, Sections 602(a)(19)(A)(i) and (ii). The evaluation of individuals proceeds with unemployed fathers initially and other defined groups thereafter. See U. S. Dep't. of Health, Education & Welfare, Guidelines For the Work Incentive Program, § 6101 (1969). Upon referral by a caseworker familiar with the recipient's background, the local Employment Services Agency of the Department of Labor conducts its own assessment of the individual, draws up a plan meeting the individual's employability needs, and places him in a suitable work position, occupational training, or special work projects. See Title 42, United

States Code, Sections 602(a)(19) (D), 633(b), 633(d) and 634.

Like the Work Rules, WIN is "designed to help families and individuals to become self-supporting rather than dependent upon welfare checks," see S. Rep. No. 1589, 87th Cong., 2d Sess. 7 (1962), but, unlike the Work Rules, WIN provides more elaborate procedural protections for the public assistance recipient. Under WIN, the recipient is entitled to a hearing, prior to referral, on the issue of appropriateness for referral. See Title 42, United States Code, Section 602(a)(4) and 45 C. F. R. § 220.35(a)(15). A second hearing, if needed, on the issue of good cause for refusal to accept employment or training after referral to WIN is also required. See Title 42, United States Code, Section 633(g) and 45 C. F. R. § 220.35(a)(16). In the event of a finding that good cause is not present, a recipient may delay termination of assistance by accepting counseling for a period of sixty days. See Title 42, United States Code, Section 602(a)(19)(F).

As an incentive, WIN enrollees in assessing their welfare needs are permitted to disregard the first thirty dollars of their monthly earned income and one-third of the remainder. See Title 42, United States Code, Section 602(a)(8)(A)(ii). Adequate child care must be assured for working mothers as a precondition of WIN referral. See Title 42, United States Code, Section 602(a)(15)(B)(i). Compulsory referral of the aged, or those required at home for other reasons, is prohibited. See Title 42 United States Code, Section 602(a)(19)(A).

In contrast to the complex WIN referral procedures, with the use of appropriateness determinations, employ-

ability teams, and personal development plans, the screening procedures of the Work Rules are substantially less elaborate. In a recent study[19] of the operation and effect of the Work Rules, over sixty-seven percent of a sample of persons declaring themselves unemployable to the Department of Social Services caseworkers were, upon referral to the State Employment Service, found to be in fact unemployable and therefore improperly referred.

In enacting the WIN program and the Work Rules, Congress and the New York Legislature, respectively, have sought a similar end but by unquestionably different means. As the *Woolfolk* court noted:

> Congress has endorsed the use of the threat of termination of subsistence level support as a means of forcing the acceptance of training or employment only when the job or the training meets specific federal requirements. State rules seeking roughly similar ends but differing sharply in means cannot coexist. (325 F. Supp. at 1177.)

In addition to pointing to the *Woolfolk* decision as suitable authority for holding the New York Work Rules invalid under the Supremacy Clause, plaintiffs point to the comprehensiveness of a number of WIN provisions as evidencing a preemptive intent. For example, Section 602(a)(19)(A) of Title 42, United States Code, provides for the referral to WIN of *each* appropriate AFDC recipient. Further pointing up the conflict, plaintiffs argue, is the possibility that persons deemed inappropriate for WIN referral may nonetheless be referred to work under the Work Rules under threat of grant termination for failure to comply. Finally, plaintiffs point to the different penalty provisions of WIN and the Work Rules. The Work Rules require an

AFDC recipient to accept referral to WIN, when such a referral is made, under threat of being subjected to a penalty of thirty days of ineligibility for AFDC, see 18 N. Y. C. R. R. § 385.6(a)(2). WIN in contrast provides for ineligibility only for so long as a person refuses to cooperate. See Title 42, United States Code, Section 602(a)(1)(F). Further, WIN requires sixty days of counseling prior to termination for refusal to participate, but there is no counseling requirement prior to the imposition of the thirty-day penalty under the Work Rules.

While it should "not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so," *Schwartz* v. *Texas,* 344 U. S. 199, at 202 (1952), we find nothing in the state's brief which compels us to reach a conclusion different from *Woolfolk* and *Bueno* on the preemption question. The comprehensive intent and language of WIN, as well as its legislative history, clearly support the proposition that, for those in the AFDC program, WIN preempts the Work Rules program.

Plaintiffs next argue that the Work Rules violate the Thirteenth Amendment "because they violate the standards of due process which must be met before the highly placed freedom from compulsory work can be infringed, and because the public works projects implemented by the New York Work Rules impose a form of involuntary servitude on welfare recipients." We find the argument unpersuasive and without merit in all respects. Requiring employable persons on public assistance to engage in employment if available, in the absence of circumstances different from those presented in this case, is entirely proper. See generally, *United States* v. *Shackney,* 333 F. 2d 475 (2d Cir. 1964).

Plaintiffs' final arguments, that the Work Rules violate the Equal Protection and Due Process clauses of the Constitution, need only be considered with reference to recipients of public assistance under the Home Relief program, one over which the federal government exercises no "power of the purse."

Under the Equal Protection clause, it is argued that, while a classification of persons as "unemployed employables" might be rational, the Work Rules, by establishing a presumption of employability, erect an improper and irrational classification. The check pickup requirement, plaintiffs claim, works a serious hardship on recipients by effectively reducing their grants and subjecting recipients to the risk of a complete summary loss of assistance. These results arise from recipients incurring uncompensated transportation expenditures in traveling to pick up their checks and, where transportation is unexpectedly unavailable, risking loss of the check for several days in the complicated state welfare bureaucracy, since checks not picked up at SES must be returned to the local welfare agency until further investigation before release. The due process arguments are that the Work Rules' definition of employability is unreasonably vague, and that the absence of any provision in the Rules permitting recipients a hearing to challenge their classification as employable violates the requirements of *Goldberg* v. *Kelly*, 397 U. S. 254 (1970).

Practically, there are arguments which can be made that the presumption of employability is irrational. Before the state enacted this legislation, no attempt was made to determine the skills or training possessed by individuals who would be classified as employable, and the state had no

information about what jobs they could fill. This legislation was enacted at a time when throughout the state and elsewhere many individuals with considerable know-how and experience were being laid off and unable to locate new employment. "The number of unemployed [in New York last August] was the highest for any August on record."[11]

A statutory classification in the area of social welfare, however, is consistent with the Equal Protection Clause if it is "rationally based and free from invidious discrimination," see *Dandridge* v. *Williams*, 397 U. S. 471 (1970). The Work Rules reflect a judgment by the state's Executive and Legislature that a drastic revision of the state's welfare program was in order. This court cannot say that the Rules are without a rational basis under the circumstances.

This is not to say that the Rules do not inflict hardships upon welfare recipients. For those living a long distance from the SES office and without a private means of transportation, the semi-monthly check pickup is a major expense and therefore works a reduction of the grant. An attempt by the Legislature's Committee on Social Services to obtain passage of a bill (S. 8858, A. 10661) providing for a hardship justification permitting some to be relieved of the check pickup requirement failed to make any headway in the recent legislative session. Section 385.5 of the Regulations of the Department of Social Welfare, however, was amended by the Commissioner of Social Services in March, 1972. Under the amended regulations, semi-monthly reporting is changed to reporting four times a year if a "transportation hardship" exists and other conditions are met. The "transportation hardship" means:

(1) Absence of public transportation from the recipient's home to the SES office;

(2) Absence of private means of transportation, including neighbors, friends, and relatives;

(3) The recipient's home is not within a reasonable walking distance to such office; *and*

(4) The social services official is unable to provide transportation through the use of case aids, volunteers, etc. to enable the recipient to report to the SES on a semi-monthly basis.

If all the above are present and a "transportation hardship" is determined to exist, then the social services official may require the recipient to document his efforts to resolve his transportation hardship.

The difficulties incident to the semi-monthly check pickup requirement, while probably a harsh burden for many HR recipients if the affidavits of the intervening plaintiffs herein are any measure of problems arising across the state, do not on the facts now before the court arise to a denial of equal protection. There is no evidence that the state has singled out those with transportation hardships as targets of a special classification or special treatment.

The Work Rules are said to be unconstitutionally vague in defining those who are and are not subject to them. Particular reference is made to various regulations, for example, 18 N. Y. C. R. R. § 385.1(6), adopted in an effort to explain that list of factors in Section 131(4) of the Social Welfare Law, recited earlier,[12] which exempt the ill, aged, and certain others from participation in the program. While it is apparent that the Rules do not provide administrators with the detail and precision that would prevent

information about what jobs they could fill. This legislation was enacted at a time when throughout the state and elsewhere many individuals with considerable know-how and experience were being laid off and unable to locate new employment. "The number of unemployed [in New York last August] was the highest for any August on record."[11]

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The difficulties incident to the semi-monthly check pickup requirement, while probably a harsh burden for many HR recipients if the affidavits of the intervening plaintiffs herein are any measure of problems arising across the state, do not on the facts now before the court arise to a denial of equal protection. There is no evidence that the state has singled out those with transportation hardships as targets of a special classification or special treatment.

The Work Rules are said to be unconstitutionally vague in defining those who are and are not subject to them. Particular reference is made to various regulations, for example, 18 N. Y. C. R. R. § 385.1(6), adopted in an effort to explain that list of factors in Section 131(4) of the Social Welfare Law, recited earlier,[12] which exempt the ill, aged, and certain others from participation in the program. While it is apparent that the Rules do not provide administrators with the detail and precision that would prevent

confusion and error in the classification process, so long as procedures exist whereby people who are not "employable" are not thrust indiscriminately into the class of "employables," neither the presumption of employability nor the lack of precision in some parts of the Rules rise to the dimension of violating due process.

This brings us to the question of the adequacy of the procedures under the Rules for fair hearings in accordance with *Goldberg, supra.* Plaintiffs claim there is no provision in the Work Rules for any formal administrative review of a person's classification as employable until his assistance grant is placed in jeopardy by a refusal to comply with the Rules. Further, unless the recipient prevails at the hearing at the pre-termination stage, the consequence of noncompliance is a mandatory thirty-day penalty during which assistance is denied even if the recipient changes his mind.

In an affidavit submitted to the court after oral argument in this matter, the Commissioner (then Executive Deputy) of the Department of Social Services stated in part:

> Under the fair hearing policies of the State Department of Social Services an individual who is determined to be employable by a local social services official and who feels aggrieved by such determination of his status as an employable person, has a right to a fair hearing before the State Commissioner of Social Services on such issue.
>
> There is no required condition for such fair hearing that the individual be first discontinued from public assistance. He may test, by a fair hearing, the correctness of his classification as an employable person, while complying with the registration, certification, employment referral and check pick-up requirements.

> Section 131, subdivision (4) of the Social Services Law requires every employable individual to receive his public assistance check in person at a local office of the State Employment Service; whereas, if he is deemed not to be an employable individual, the check is mailed to him. These requirements relate to the manner of payment of assistance. Accordingly, the issue of an individual's employability status is an "adequacy" issue relating to manner of payment under Section 84.3 of the Rules of the State Board of Social Welfare (now effective as a Regulation of the Department) which provides that applicants for or recipients of public assistance shall be entitled to a fair hearing on the grounds of: "inadequacy in amount or manner of payment of asistance . . ."

Although the Commissioner's representations effectively nullify plaintiffs' argument on the absence of and need for a fair hearing upon a determination of employability and before termination, the record remains barren of any indication that recipients are aware of the above procedure. Moreover, the general dimensions of the due process protections afforded at the hearing, see *Goldberg, supra,* at 267-71, are not described. To the extent that persons are unaware of their right to a hearing because of a lack of forthright disclosure by the state, the right's value is reduced. Accordingly, within thirty days after the filing of this decision, the state is directed to implement suitable means of informing HR recipients of their hearing rights. *Cf. Hagans* v. *Wyman,* Docket No. 72-1327 (2d Cir., June 5, 1972).

The further effect of this decision is to enjoin the operation of the Work Rules as applied to AFDC recipients. This, of course, does not mean that the court is ignoring the state's problems in managing its welfare system or dis-

agreeing with the merits of a state program to move persons from welfare rolls to payrolls. In short, as the *Bueno* court noted, "We recognize the pressure, political and moral, upon the [welfare department] to use both the carrot and the stick to try to place welfare recipients in gainful employment." What the decision does mean, however, is that at least with respect to AFDC recipients, the WIN program is the exclusive manner of applying the carrot and stick.

The Clerk is directed to enter judgment in this matter seven days after filing of this decision.

So ordered.

/s/ JAMES L. OAKES
U.S. C.J.

/s/ JOHN O. HENDERSON
U.S.D.J.

/s/ JOHN T. CURTIN
U.S.D.J.

Dated: July 28, 1972.

FOOTNOTES

[1] Subdivision four of Section 131 was amended by Chapter 102, Laws of New York, 1971.
Section 164 was amended by Chapter 101, Laws of New York, 1971.

[2] Section 350-k was added as a new section by Chapter 101, Laws of New York, 1971.

[3] Administrative Letter No. 71 PWD-34 provides as follows:
Chapter 102 of the Laws of 1971, effective July 1, 1971, amends Section 131.4 of the Social Services Law. The amendments contain three significant additions:
1. The statutory definition of "employable" is as follows:
A person shall be deemed employable if such person is not rendered unable to work by:

(a) illness of significant and substantial incapacitation, either mental or physical to the extent and of such duration that such illness or incapacitation prevents such person from performing services.
(b) advanced age.
(c) full-time attendance at school in the case of a minor, in accordance with provisions of the Law. (N. B. this is interpreted not to include emancipated minors.)
(d) full-time, satisfactory participation in an approved program of vocational training or rehabilitation.
(e) the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care.

2. A person assigned to and participating in a public works project under the provisions of sections 164 or 350-k of the Social Services Law shall be deemed to be employable but not employed.
3. Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the Division of Employment of the State Department of Labor.

The Department, in cooperation with the State Labor Department, is presently developing regulations, policies and procedures to implement this Law as of July 1, 1971. As these are developed, we will further advise you.

In order that each local social services district have as much time as possible to prepare for the orderly implementation of the Law, the following steps should be initiated immediately so that they are completed by no later than June 30, 1971.

A. Each social services district shall immediately review its under-care caseload to insure that its roster of HR and ADC employables is up to date. The roster shall be kept current by additions and deletions as they occur.
B. In addition, the following type cases shall be separately identified:
   1. The "employable" not deemed to be employable because of participation in an approved program of vocational training or rehabilitation; *i. e.*, WIN, MOTA, etc. (See Bulletin 26, page 7 for other examples). If the "employable" person is not the grantee, his relationship shall be specified.

2. The grantee is "employable", and there are one or more other "employables" in the family. The relationship of the other "employables" to the grantee shall be specified.
3. The grantee is not "employable", but there are "employables" in the family: *i. e.*, an instance of a disabled ADC mother with an "employable" 17 year old son; etc. The relationship of the "employable" to the grantee shall be specified.

C. In each case where there is an "employable" male head-of-family, he shall be made grantee for the family grant, if he is not presently the grantee.

D. Since the "employable's" Social Security Account number will be used as an identifier, all individuals age 14 and over are required to possess a Social Security Account number.

Methods and procedures for securing a Social Security Account number for those individuals not now possessing one will be released within the next few days.

[4] Administrative Letter No. 71 PWD-43 provides as follows:

As you know, the Laws of 1971 place a renewed and expanded emphasis on restoring all employable recipients of public assistance to employment in the regular economy. Accordingly, all unemployed employable persons applying for or receiving public assistance are not only required to register at the New York State Employment Service district office in their community, and report there regularly for appropriate employment counseling services and job referral; but, effective July 1, they will also pick up their assistance checks there. The penalty for not cooperating in this procedure is ineligibility for public assistance whether the individual is the grantee head of family, single person living alone, or non-grantee non-head of family.

The Law places the full responsibility for the determination of employability and for the required action in applying sanctions for failure to cooperate in the process on the local social service agencies. It is the intent of the Legislature that the services required to implement the various provisions of the Law be a top priority activity in social service agencies and that the necessary monitoring of the program to provide the report data necessary for evaluation be an inherent part of the entire process.

To assist you in implementing and evaluating the legal requirements, this Department has had a series of discussions and clearances with the New York State Department of Labor and the Social Security Administration. We have reached agreement regarding the basic components and a standardized procedure

which will assure uniform, effective processing and reporting operations state-wide. Obviously, it will be necessary for you to establish close working relationships with the local offices of these agencies to assure that everything possible is done to achieve an orderly work flow so that the objective of the Law to restore employable recipients to employment may be accomplished without confusion, or harassment to the recipients. Because of the wide variations in workloads throughout the State, some minor adjustments in the procedures outlined may be necessary at the local level. It is important that these do not interfere in any way with the required referral process or reporting requirements.

I also believe that there is need for planned local publicity around these new requirements of the Law and the procedures for implementing them. I urge you to utilize all available community resources to help you to promote a full understanding of this important legislation.

This Department is planning a series of special meetings around the State with you and representatives of your staff to explain and clarify the policy and procedural material reflected in this Administrative Letter. If you have any questions we will be happy to help you resolve them. Representatives from the Department of Labor will also be participating with staff of this Department in these meetings. I am certain that you will give this matter your immediate attention so that this intensified effort toward employment can be operative by July 1.

[5] The categories of public assistance in New York particularly common in this lawsuit are Home Relief and Aid to Families with Dependent Children. Home Relief [HR] is a general assistance program for persons not covered by other programs of assistance. Aid to Families with Dependent Children [AFDC and AFDC-U] is a program of financial assistance given to a family with minor children without sufficient means of support because of the absence, unemployment, death or incapacity of a parent. New York is partially reimbursed by the federal government for expenditures under the AFDC program, but there is no federal reimbursement for the costs of the HR program. See Title 42, United States Code, Sections 601 *et seq.* Other categories include Veteran Assistance, a segment of the HR program, and Old Age Assistance, Assistance to the Blind, and Aid to the Disabled. Excepting Veteran Assistance, these programs are partially federally financed. See Title 42, United States Code, Sections 1381 *et seq.*

[6] In pertinent part, the Special Message stated:

> Work is essential to a healthy individual and a healthy society.
>
> Welfare should be a bridge to work for those able to work, as well as a shield against want.
>
> Welfare benefits should aid those who work and need supplemental help.

But welfare benefits will not be a substitute for work.

The welfare legislation I am submitting to your Honorable Bodies therefore:

1. Redefines employability and limits the discretion of local social services districts to declare an individual unable to work;
2. Requires every employable public assistance recipient to report to the State Employment Service every two weeks to pick up his assistance check instead of having it mailed by the welfare district as is presently done;
3. Requires a bi-weekly employment counselor interview through which an employable public assistance recipient would be directed to a private job opportunity, or a training program, or a public works project;
4. Requires every social service district to provide or contract for a public works program—including neighborhood envioronmental and day care center work—to which the Emvironmental and day care center work—to which the Employment Service may assign appropriate employable recipients;
5. Directs the Employment Service to locate and develop employment opportunities for unskilled public assistance recipients, to maintain a special job register, and to provide job preparation and follow-up services;
6. Denies welfare to an employable individual who quits a job without good cause or refuses a job he or she is able to perform.

[7] The public works projects provisions have not been implemented. By letter, dated April 28, 1971, the HEW Regional Commissioner indicated to Commissioner Wyman that such projects, as they related to AFDC recipients, would not be approved for federal aid.

[8] In passing, it should be noted that despite the efforts of the plaintiffs, at the direction of the court, neither the views nor the participation of the Department of Health, Education, and Welfare could be obtained in this lawsuit.

[9] 42 U. S. C. §§ 602(a) and 632 *et seq.* See generally Comment, *Public Welfare "WIN" Program; Arm Twisting Incentives,* 117 U. Pa. L. Rev. 1002 (1969), and Comment, *The Failure of the Work Incentive (WIN) Program,* 119 U. Pa. L. Rev. 485 (1971).

[10] See *Study of Selected Aspects of the 1971 New York State Legislative Provisions on Public Assistance Employables* (March 1972) prepared by the United States Department of Health, Education, and Welfare and Department of Labor and the New York State Department of Labor and Department of Social Services.

[11] *Id.* at 21.

[12] See page 23, *supra.*

APPENDIX "B"

Final Judgment Appealed From

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DOLORES DUBLINO, *et al.*,

v.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, *et al.*

Civ—1971-306.

Sir:

Take notice of an Order, of which the within is a copy, duly granted in the within entitled action on the 25th day of August, 1972, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 25th day of August, 1972.

Dated: Buffalo, New York, August 25, 1972.

JOHN K. ADAMS, Clerk
U. S. District Court
U. S. Courthouse
Buffalo, New York 14202

Final Judgment Appealed From

To Michael A. O'Connor
Attorney for Plaintiffs

To Mayer G. Freed
Attorney for Plaintiffs

To Jean M. Coon
Attorney for Defendant—NYS

To Leonard C. Koldin
Attorney for Defendant—Lascaris

To Gregory Stamm
Attorney for Defendant—Erie County

Federal Rules of Civil Procedure 77(d)

Final Judgment Appealed From

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Defendant-Intervenors.

Civil 1971—306.

This action having come on to be heard on the merits before the Court, the Honorable James L. Oakes, Circuit Judge, the Honorable John O. Henderson and the Honorable John T. Curtin, District Judges for the Western District of New York, and after hearing arguments of counsel, the Court having rendered its opinion on July 28, 1972, and the Court having considered judgments proposed by plaintiffs and defendants, it is hereby ORDERED, ADJUDGED and DECREED:

Final Judgment Appealed From

1. That pursuant to 28 U. S. C. §§ 2201 and 2202, N. Y. Soc. Serv. L. §§ 131(4) and 350-k, 18 N. Y. C. R. R. Part 385, and all Administrative Letters of the New York State Department of Social Services issued pursuant thereto (these statutes, regulations, and Administrative Letters are hereafter referred to collectively as the "New York Work Rules"), be and are hereby declared to be in conflict with § 402(a)(10) of the Social Security Act of 1935 as amended, 42 U. S. C. § 602(a)(10), and to be preempted by §§ 402(a)(19) and 430 *et seq.* of the Social Security Act of 1935, as amended, 42 U. S. C. §§ 602(a)(19) and 630 *et seq.*, and are unconstitutional under the supremacy clause of Article VI of the United States Constitution, insofar as they are applied to applicants for or recipients of Aid to Families with Dependent Children and Aid to Families with Dependent Children—Unemployed Parent (these two programs will hereafter be referred to as "AFDC") in the State of New York.

2. That from 60 days after the date of this order and judgment, defendants, their successors, agents, and all persons acting in concert with them, be and hereby are permanently enjoined, ordered and directed to cease all enforcement of the New York Work Rules against recipients of and applicants for AFDC in the State of New York.

3. That defendants New York State Department of Social Services and its Commissioner, Abe Levine, be and are hereby enjoined, ordered, and directed to require each local Social Services District in the State of New York to deliver all checks for AFDC benefits by mail, such checks to be for the full monthly or semi-monthly benefit, and to cease requiring any AFDC recipients, including any person

participating in the Work Incentive Program, to obtain his or her check for AFDC benefits by reporting in person to an office of the State Employment Service. Delivery of checks by mail shall commence within 60 days of the date of this order and judgment.

4. That plaintiffs' First, Second and Third Causes of Action be and are hereby dismissed, except that with respect to plaintiffs' Second Cause of Action, defendants New York State Department of Social Services and its Commissioner, Abe Lavine, be and hereby are enjoined, ordered and directed to adopt and implement by September 29, 1972, suitable means of informing each recipient of Home Relief, who has been declared employable pursuant to the New York Work Rules, of his rights to a fair hearing on the issue of employability.

5. Plaintiffs are hereby awarded costs but not attorneys' fees.

6. Implementation of the foregoing judgment will be subject to further order of this Court upon due application as justice may require.

JAMES L. OAKES
U. S. C. J.

JOHN O. HENDERSON
U. S. D. J.

JOHN T. CURTIN
U. S. D. J.

Dated:

APPENDIX "C"

Order Amending Judgment

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Defendant-Intervenors.

Civil 1971—306.

Appearances:

Legal Aid Bureau of Buffalo, Inc. (Michael A. O'Connor, of Counsel), and National Employment Law Project, New York (Mayer G. Freed, of Counsel), for the Plaintiffs.

Louis J. Lefkowitz, Attorney General of the State of New York (Jean M. Coon, Assistant Attorney General, of Counsel), for the Defendants.

Order Amending Judgment

James L. Magavern, County Attorney, Erie County (Gregory Stamm, Assistant County Attorney, of Counsel), for Defendants Erie County Department of Social Services and its Commissioner, George G. Sipprell.

The plaintiffs' motion to amend the Court's order of August 25, 1972 having been argued, with the consent of the parties, before the Honorable John T. Curtin, District Judge for the Western District of New York, and Judge Curtin having made a report to the other members of the Court, the Honorable James L. Oakes, Circuit Judge, and the Honorable John O. Henderson, Chief Judge for the Western District of New York, and the Court having considered the briefs and other materials submitted by the parties, it is hereby

ORDERED that the Court's order of August 25, 1972 be amended by adding the following paragraph after paragraph 2:

> 2a. That after September 21, 1972 there be no enforcement of sanctions against AFDC recipients for violations of the New York Work Rules.

It is further hereby

ORDERED that in all other respects the plaintiffs' motion to amend the Court's order of August 25, 1972 is denied.

/s/ JAMES L. OAKES
U. S. C. J.

/s/ JOHN O. HENDERSON
U. S. D. J.

/s/ JOHN T. CURTIN
U. S. D. J.

Dated: October 18, 1972.

APPENDIX "D"

Notice of Appeal

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Defendant-Intervenors.

---

71 Civ.—306.

Notice is hereby given that the New York State Department of Social Services, its Commissioner, Abe Levine, the New York State Department of Labor, and the Industrial Commissioner of the State of New York, Louis L. Levine, defendants above-named, hereby appeal to the Supreme Court of the United States from the final order and judgment entered in this action on August 25, 1972, holding New York Social Services Law, §§ 131(4) and 350-k, and the

Rules of the Department of Social Services adopted pursuant thereto to be in conflict with section 402(a) (10) of the Social Security Act of 1935, as amended, 42 U. S. C. § 602(a) (10), and to be preempted by sections 402(a) (19) and 430 *et seq.* of the Social Security Act of 1935, as amended, 42 U. S. C. §§ 602(a) (19) and 630 *et seq.* and to be unconstitutional under the Supremacy Clause of Article VI of the Constitution of the United States, insofar as they are applied to applicants for or recipients of Aid to Families with Dependent Children, and dismissing plaintiffs' First, Second and Third Causes of Action. Defendants appeal from each and every part of said order and judgment, except that part thereof which dismissed plaintiffs' First, Second and Third Causes of Action.

This appeal is taken pursuant to 28 U. S. C. § 1253.

Dated: Albany, New York,
September 26, 1972.

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APPENDIX "E"

New York Law of 1971, Chapter 101

New York Law of 1971, Chapter 101 provides:

"Section 1. Section one hundred sixty-four of the social services law, such section having been added by chapter seven hundred fourteen of the laws of nineteen hundred fifty-nine, paragraph a of subdivision two thereof having been last amended by chapter six hundred seventy-three of the laws of nineteen hundred sixty-two, is hereby amended to read as follows:

"§ 164. Work relief. 1. As hereinafter provided, employable persons receiving home relief shall be required to perform such work as shall be assigned to them by the social services official furnishing such home relief or by the state industrial commissioner as hereinafter provided.

"2. (a) The social services official of a county, city or town which is responsible for providing home relief shall provide for the establishment of public work projects for the assignment of employable persons in receipt of home relief to perform work for such county, city or town or for the state, and the head of any department, bureau, division or other unit thereof may request that such persons be assigned to his unit. In providing for the establishment of such public work projects, such social services official may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section. In the case of a county social services district which is responsible for providing home relief within towns or cities within the county, persons may be assigned to work for the state or any city, town, or village in the county and the head of any department, bureau, division or other unit of the state or any such city, town or village may request such assignment. In

the case of a town which is responsible for providing home relief within a town, persons may be assigned to work for any village in the town and the head of any department, bureau, division or other unit of any such village may request such assignment. The request shall be addressed to the social services official or to the state industrial commissioner, in appropriate instances, and shall indicate the number of persons who can be used and the character of the work to be performed.

"(b) The social services official or the state industrial commissioner shall thereupon assign such persons in receipt of home relief who, in his judgment, are able to perform the work indicated, provided he is satisfied that such persons will not be used to replace, or to perform any work ordinarily and actually performed by, regular employees of any department or other unit of such county, city or town, or to replace, or to perform any work which would ordinarily be performed by, craft or trade in private employment.

"3. (a) Persons shall be assigned to perform only such work as they are able, in the judgment of the social services official or the state industrial commissioner, to perform.

"(b) The number of days of work to be given each person shall be determined by the amount of the budget deficit of the recipient and his family computed on local home relief budget schedules. No person shall be required to work for more than the number of days necessary to earn such amount or to be paid more than such amount. No person shall be required to work more than eight hours in a day or more than forty hours in a week.

"4. Any person who refuses to report for or to perform work to which he has been assigned by the social services official or the state industrial commissioner shall thereupon become ineligible for home relief.

"§ 2. Such law is hereby amended by adding thereto a new section, to be section three hundred fifty-k, to read as follows:

"§ 350-k. Public works projects. 1. Public works projects meeting state and federal requirements shall be established, or the establishment thereof shall be provided for, by every social services district for the conservation of work skills and/or the development of new skills of parents and other eligible relatives receiving aid to dependent children from such district.

"2 In providing for the establishment of such projects, the district may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section.

"3. A parent, or other eligible relative whose maintenance is included in the grant and allowances, may be assigned to participate in such a public work project, only if: (a) appropriate standards of health, safety and othed work conditions are maintained;

"(b) the number of days work to be given each person shall be determined in the case of a parent, by the amount of the grant or allowance, and in the case of such other eligible relative, by the amount included in the grant or allowance for his maintenance, provided that no person shall be required to work for more than the number of days necessary to earn such amount or to be paid more than such amount, or to work more than eight hours in a day or more than forty hours in a week.

"(c) such assignment would not result in the displacement of regular workers or in the performance by such parent or relative of work that is being performed by employees of public or private agencies, institutions or organizations;

"(d) provisions are made to extend coverage to such parent or relative under the workmen's compensation law;

"(e) such person is deemed employable under the provisions of subdivision four of section one hundred thirty-one of this chapter;

"(f) provisions are made to permit such parent or relative to seek regular employment and/or to secure appropriate training or re-training opportunities which may be available.

"4. A parent or other eligible relative required to participate in a public work project who fails to participate in such project, without good cause, as defined by regulation of the department, shall thereupon become ineligible for aid to dependent children.

"5. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not bring an action or proceeding against any person, to recover for payments correctly made to a parent or other eligible relative on account of his participation in a public work project.

"6. (a) Expenditures may be made by a social services district on behalf of a parent or other eligible relative participating in a public work project, only so long as federal aid for aid to dependent children shall be extended to such expenditures.

"(b) Such expenditures shall be eligible for state reimbursement in accordance with the provisions of section one hundred fifty-three of this chapter.

"§ 3. Section eight hundred twenty-one of the labor law, as amended by chapter one hundred twenty-eight of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

"§ 821. State training courses. The commissioner may provide for vocational and related, institutional and on-the-job training courses as described in section

five hundred ninety-nine of this chapter and for the administration of public work projects for recipients of public assistance, and may contract for these purposes with public and private agencies including public and private institutions of learning, employers or other appropriate organizations. He shall select for and refer to such training courses unemployed and underemployed persons who would meet the conditions for approval as specified in section five hundred ninety-nine of this chapter. He shall select and refer to public work projects all public assistance recipients registered at employment offices of the department who are neither referred thereby for employment in the regular economy or for occupational training, nor assigned to public works projects by public welfare officials. The commissioner may provide for such payments, either in advance or by way of reimbursement, from funds made available to carry out the purposes of this article, as he deems necessary.

"§ 4. This act shall take effect July first, nineteen hundred seventy-one."

IN THE

Supreme Court of the United States

October Term, 1972

FILED
DEC 1 1972
MICHAEL RODAK, JR., CLERK

No. 72-802

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Intervenors-Appellants,

against

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

STATEMENT AS TO JURISDICTION on behalf of Appellants, Onondaga County Department of Social Services and its Commissioner, John L. Lascaris.

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IN THE

Supreme Court of the United States

October Term, 1972

No.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Intervenors-Appellants,

against

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

On Appeal From the United States District Court for The Western District of New York

---

STATEMENT AS TO JURISDICTION ON BEHALF OF APPELLANTS, ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES AND ITS COMMISSIONER, JOHN L. LASCARIS.

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, the intervenors-appellants, the Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, file this statement of the basis upon which it is contended that the Supreme

Court of the United States has jurisdiction on direct appeal to review the final judgment in question, and should exercise such jurisdiction in this case.

A separate jurisdictional statement has been filed by appellants New York State Departments of Social Services and Labor and their Commissioners. The appendices to that statement include the opinion of the district court, the final judgment appealed from, and an amendment thereto. Those matters have not been reprinted in this jurisdictional statement and reference is respectfully made thereto.

OPINION BELOW

The statutory three-judge court declared certain New York State statutes and regulations collectively described as the "New York Work Rules" to be in conflict with 42 U.S.C. §602(a) (10) and to be preempted by 42 U.S.C. §§602(a) (19) and 630 et seq. and, therefore, to be unconstitutional under the Supremacy Clause of Article VI of the United States Constitution, insofar as those state statutes and regulations are applied to applicants for and recipients of aid to families with dependent children and aid to families with dependent children--unemployed parent. The judgment enjoined further implementation of the statutes and regulations as to such persons.

JURISDICTION

The appeal herein is from a final judgment made and entered in the United States District Court for the Western District of New York by a specially constituted three-judge panel convened under 28 U.S. Code §§2281 and 2284. The judgment enjoins the implementation of certain state statutes and regulations. The Supreme Court of the United States has jurisdiction to review the final judgment by direct appeal pursuant to 28 U.S. Code §1253.

The final judgment was made and entered August 25, 1972, although there was a minor amendment thereto by order entered October 18, 1972. Notice of appeal on behalf of the intervenors was filed on October 5, 1972 in the United States District Court for the Western District of New York (a copy of which notice is set out in Appendix "A" hereto).

STATUTES INVOLVED

New York State Social Services Law, §131(4), as it read prior to certain 1972 amendments quoted later in this statement, provided:

"4. No assistance or care shall be given to an employable person who has not registered with the nearest local employment agency of the department of labor or has refused to accept employment in which he is able to engage.

"A person shall be deemed to have refused to accept such employment if he:

a. Fails to obtain and file with the social services district at least once in every two-week period a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

b. wilfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

c. wilfully fails to report to such office the result of a referral to employment, or

d. wilfully fails to report for employment. Such wilful failures or refusal as above listed shall be reported immediately to the social services district by such employment office.

"For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

"Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department."

QUESTION PRESENTED

Did Congress intend the federal Work Incentive Program to be the only program applicable to recipients of AFDC and AFDC-U, and to preempt state programs and requirements for work referral of persons either not eligible for referral under the WIN Program or for whom there are no employment or training positions available under the federal program?

STATEMENT OF THE CASE

Plaintiffs, suing on behalf of themselves and their minor children, have obtained an injunction precluding the State of New York and each of its more than 60 local social services districts from requiring applicants for and recipients of aid to families with dependent children (AFDC) and aid for families with dependent children--unemployed fathers (AFDC-U) to comply with a work referral program adopted by the State of New York in 1971. The sole issue is whether the federal work incentive program (WIN) preempted the state's work referral program.

The substantial nature of the state program and the very limited nature of the federal program are discussed at length in the jurisdictional statement filed by the state appellants. However, a few additional comments may be noted.

1. The court below enjoined the application of the state work rules to the AFDC-U Program in spite of the fact that 42 U.S. Code §607(b) requires a state plan for such program to preclude assistance to any father who "has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment" and notwithstanding that a report of the Senate Committee on Finance (87th Cong., 1st Sess., p. 3 (1961) stated:

> Your committee's bill, as does the House-passed bill requires that a State agency administering the expanded aid to dependent children program must enter into cooperative arrangements with the State agency administering the public employment offices looking toward the employment of the unemployed parents of the children receiving aid. The arrangements which the State public assistance agency will need to have with the employment service must include provisions for appropriate registration for

work and periodic reregistration of the unemployed parent of a child and for otherwise making maximum utilization of the job placement services and other services and facilities of the employment office. The purpose of this provision is, so far as possible, to secure employment for the unemployed person in any jobs that may be available which there is not good cause for him to refuse as determined by the State.

Your committee believes that an unemployed individual whose family is receiving aid under this program should accept any reasonable offer of employment. Accordingly, the bill would require that a State plan include provisions to assure that aid is not provided if, and for as long as, the unemployed parent refuses without good cause to accept employment in which he is able to engage. Considerable latitude would be left to the State in determining the period during which assistance would be denied. It is not intended to permanently disqualify the family during subsequent periods when no offer of employment is available. The state would determine whether the parent had good cause for refusing an offer of employment.

2. Congress knew that under 42 U.S.C. §632(a), the Secretary of Labor would establish work incentive programs only in those state political subdivisions in which the Secretary determined "there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children" and that "in other political subdivisions, he [the Secretary of Labor] shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established." In New York State, the WIN Program was established by the Secretary of Labor in only 12 of the state's 64 social services districts. The Secretary refused to authorize additional WIN

Programs in the other districts. Adequate transportation is not available to enable recipients in districts without WIN Programs to travel to one of the 12 available programs. Yet, the district court's judgment precludes the state from implementing its work referral program even in those districts in which there is no WIN Program in operation.

3. The 12 WIN Programs in operation in the State of New York are only authorized to service 16,800 persons. Yet, there are an estimated 75,000 registered AFDC recipients who are potential WIN participants but who cannot be served because the WIN Program does not have capacity to accommodate them. Yet the district court's judgment precludes the state from requiring these other recipients not enrolled in and participating in the WIN Program from being required to comply with another work referral program.

4. The opinion of the court below noted that "Under WIN, the recipient is entitled to a hearing, prior to referral, on the issue of appropriateness for referral." (State appellants' Appendix, p. 26). But the state's practices afforded a fair hearing on the issue of employability under the state referral program, as the court noted in its opinion (State appellants' Appendix, pp. 32-33). A recipient may test the correctness of his classification as an employable person without first being discontinued from public assistance. There is no substantial conflict, then, in this regard between WIN Program and the state's program.

5. The court below noted that "As an incentive, WIN enrollees in assessing their welfare needs are permitted to disregard the first $30.00 of their monthly earned income and one-third of the remainder." (State appellants' Appendix, p. 26). But all earned income of AFDC recipients is subject to the so-called 30 and one-third exemption under the state's regulations. 18 N.Y.C.R.R., §352.20 (b) (2).

6. The court below noted that "Adequate child care must be assured for working mothers as a precondition of

WIN referral." (State appellants' Appendix, p. 26). But the state's program contains virtually identical assurances of adequate child care in 18 N.Y.C.R.R., §385.3(b) (3). A 1972 amendment to §131, subdivision 4 of the State Social Services Law provides:

> "For the purposes of this subdivision and subdivision five, a person receiving or applying for aid to dependent children shall be deemed employable in accordance with the provisions of section three hundred fifty-e of this chapter, except that a mother who is unable to work by her need to provide full-time care for her children, and for whom required care is not otherwise reasonably available notwithstanding diligent efforts by such mother and appropriate social services department to provide such care shall not be deemed employable." (Chapter 941 of the Laws of 1972).

7. The court below noted that "Compulsory referral of the aged, or those required at home for other reasons, is prohibited" (State appellants' Appendix, p. 26). But the state statute and state regulations contain similar exemptions. 18 N.Y.C.R.R., §385.1(a); State Social Services Law, §131, subdivision 4.

8. The court below held that "in contrast to the complex WIN referral procedures, with the use of appropriateness determinations, employability teams, and personal development plans, the screening procedures of the Work Rules are substantially less elaborate." (State appellants' Appendix, pp. 26-27). The court noted that one study of the state's program had found over 67% of a sample of persons to have been improperly referred to the state employment service because they were in fact unemployable. The short answer is that the state required its local social services districts to implement the new Work Rules Program in 1971 on very short notice of less than a month; and it is not surprising that administrative errors may have occurred in some local social services districts.

But those errors were remedied when they were discovered or when the welfare recipients complained. In other cases, temporary restraining orders as to such persons were obtained by the plaintiffs in this proceeding and the local districts were not even afforded an opportunity to take other action on those cases. In any event, the initial administrative burden of implementing the Work Rules as to tens of thousands of recipients was overcome and there is no substantial reason why any initial administrative errors in some localities should form a basis for permanently enjoining the operation of the entire state program for all time.

9. The State of New York clearly represented to the court below, through the testimony of several witnesses, that persons eligible for and referrable to WIN must be referred to the WIN Program wherever there were WIN slots available for them and that in such cases the state program would not supersede the WIN Program. The state makes the same representations on page 14 of its jurisdictional statement in this court. A new state law enacted by the 1972 State Legislature, chapter 941 of the Laws of 1972, amended §131, subdivision 4 of the State Social Services Law to provide that:

> "Notwithstanding §350-e or any other provision of this chapter, the provisions of this subdivision shall apply to applicants for or recipients of aid to dependent children until such time as they are enrolled and participating in the Work Incentive Program."

10. The effect of the judgment below is to authorize thousands of AFDC recipients in the State of New York who are clearly employable persons, with adequate child care plans, to refused available employment, and, indeed, apparently even to quit existing employment, to sit idle without any good cause and collect public assistance. Such a result is so contrary to the interests of the taxpayers of

this country that it should be reviewed by the Supreme Court and such a result should be rejected. There can be no stronger case for applying the well settled principle that state legislation will not be preempted by federal statutes unless Congress has clearly, expressly and unequivocally indicated its intent to do so. It is respectfully submitted that neither the opinion below nor the opinion of the Virginia District Court in Woolfolk vs. Brown, 325 F. Supp. 1162, Aff'd 456 F.2d 652 (4th Cir. 1972), contains sufficient justification to warrant such findings of federal preemption.

There can be no doubt that the question presented to the court is very substantial, affecting, as it does, the operation of the largest single public assistance program in the State of New York. One cannot imagine any legal question involving the interpretation of the federal welfare laws that could be any more important.

CONCLUSION

The court should take jurisdiction of this appeal.

DATED: December 1, 1972.

Respectfully submitted,

PHILIP C. PINSKY, ESQ.
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APPENDIX A — Notice of Appeal.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS, and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Plaintiffs

-against-

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, GEORGE K. WYMAN; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS J. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE G. SIPPRELL,

Defendants

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Defendant-Intervenors.

71 Civ. - 306

Notice is hereby given that the Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, Defendant-Intervenors above named, hereby appeal to the Supreme Court of the United States from the final order and judgment entered in this action on August 25, 1972, holding New York Social Services Law, §§131(4) and 350-k, and the Rules of the Department of Social Services adopted pursuant thereto to be in conflict with Section 402(a) (10) of the Social Security Act of 1935, as amended, 42 U.S.C. §602(a) (10), and to be preempted by sections 402 (a)19) and 430 et seq. of the Social Security Act of 1935, as amended, 42 U.S.C. §§602(a) (19) and 630 et seq. and to be unconstitutional under the Supremacy Clause of Article VI of the Constitution of the United States, insofar as they

are applied to applicants for or recipients of Aid to Families with Dependent Children, and dismissing plaintiffs' First, Second, and Third Causes of Action. Defendant-Intervenors appeal from each and every part of said order and judgment, except that part thereof which dismissed plaintiffs' First, Second and Third Causes of Action.

This appeal is taken pursuant to 28 U.S.C. §1253.

Dated: Syracuse, New York
October 2, 1972.

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Appendix A — Notice of Appeal.

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FILED
DEC 13 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE: NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE: ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Intervenors-Appellants,

against

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

SUPPLEMENTAL STATEMENT AS TO JURISDICTION ON BEHALF OF APPELLANTS NEW YORK STATE DEPARTMENTS OF SOCIAL SERVICES AND LABOR AND THEIR COMMISSIONERS

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of Counsel

BATAVIA TIMES, LAW PRINTERS,
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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Intervenors-Appellants,

against

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

On Appeal from the United States District Court for the Western District of New York

SUPPLEMENTAL STATEMENT AS TO JURISDICTION ON BEHALF OF APPELLANTS NEW YORK STATE DEPARTMENTS OF SOCIAL SERVICES AND LABOR AND THEIR COMMISSIONERS

The Notice of Appeal in this case was filed in the office of the Clerk of the United States District Court for the Western District of New York on the 28th day of September, 1972. The Jurisdictional Statement herein was not filed until November 29, 1972. This Supplemental Statement as to Jurisdiction is submitted to this Court in support of appellants' position that the original statement should be considered by this Court as timely filed or, in the alternative that this Court should extend the time for filing until November 29.

The Statement as to Jurisdiction on behalf of the State appellants was received in the Department of Law, from our printer, on November 20, 1972. On that date, three copies of the statement were served on counsel for the plaintiffs and for each of the other appellants (See Exhibits A-1, A-2, A-3 and A-4 attached hereto). On the same date, a check for the docketing fee was requested and received from the Finance Officer of the New York State Department of Law (see Exhibit B attached hereto). Also on November 20, our Managing Attorney addressed a letter to the Clerk of the Supreme Court of the United States forwarding the Jurisdictional Statement for filing and enclosing the docket fee and notice of appearance, along with an affidavit of service of copies of the Statement upon the other attorneys.

On the morning of November 21, 1972, a package containing the above stated items, along with the statements, letter, etc. in connection with another case (*Nyquist* v. *Committee for Public Education and Religious Liberty*, 72-791) was delivered to United Parcel Service for delivery to this Court. United Parcel Service has generally proved to be faster and more reliable for prompt delivery than has the United States Postal Service and has been so utilized, without difficulty, by this office for several years.

It was expected that, considering past performance by UPS, the package would be delivered to this Court no later than November 24, 1972 (considering possible delays in transhipping out of New York City and the Thanksgiving Holiday), still within the 60-day time limit for filing the Statement pursuant to the Rules of this Court.

An article carried by Gannett News Service papers on the evening of November 28, concerning the filing of a jurisdictional statement by other appellants in the *Nyquist* case (the other case transmitted to the Court with this case), prompted an inquiry of the Court on the morning of November 29 to determine if New York State's Statement as to Jurisdiction in *Nyquist* had been filed. Upon discovering at that time that neither Statement had yet been received by the Court, an immediate inquiry was made of United Parcel Service as to the disposition of the package delivered to it on November 21. Although no explanation has been provided to the Department of Law as to the reason for the delay, United Parcel then delivered the package to the Court on November 29 and both appeals docketed as of that date.

Every reasonable effort was made by the State of New York to comply with the Rules of this Court as to the time for docketing appeals. At the time of transmittal of the Statement, the Department of Law had no reason to believe that the Statement would not be promptly and timely delivered to the Court for docketing.

It should also be noted that the plaintiffs in the action, by notice of appeal received on October 24, 1972, have appealed from that part of the judgment of the District Court which dismissed those portions of the complaint which alleged that the New York Work Rules violate the Thirteenth and Fourteenth Amendments to the Constitution of the United States. Defendants Erie County Depart-

ment of Social Services and Onondaga County Department of Social Services have also appealed from the same portion of the judgment as have the State defendants. The Jurisdictional Statement on behalf of Onondaga County has been filed with this Court and adopts and supplements the Jurisdictional Statement filed on behalf of the State defendants. A consideration of the arguments as to jurisdiction contained in the Statement on behalf of the State defendants will, therefore, be necessary in order for this Court to consider the arguments as to jurisdiction raised by Onondaga County.

It is respectfully submitted that this Court should consider the Statement as to Jurisdiction on behalf of the State defendants to have been timely filed, or, in the alternative, those defendants respectfully request that this Court extend the time to file from November 27, 1972 to November 29, 1972.

Dated: December 11, 1972.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Appellants New York State Departments of Social Services and Labor and their Commissioners
The Capitol
Albany, New York 12224
Telephone (518) 474-7138

RUTH KESSLER TOCH
Solicitor General

JEAN M. COON
Assistant Solicitor General

of Counsel

Exhibit A-1

Telephone: 474-5240

November 20, 1972

Re: N. Y. S. Dept. of Social Services, *et al.* vs. Dolores Dublino, *et al.*

Michael A. O'Connor, Esq.
Legal Aid Bureau of Buffalo, Inc.
481 Swan Street
Buffalo, New York 14204

Dear Mr. O'Connor

Served herewith are three copies of our Statement As To Jurisdiction in the above matter now pending in the Supreme Court of the United States.

LOUIS J. LEFKOWITZ
Attorney General

By: MARC F. BOYER
Managing Attorney

Encl.
cp

Exhibit A-2

Telephone: 474-5240

November 20, 1972

Re: N. Y. S. Dept. of Social Services, *et al.* vs. Dolores Dublino, *et al.*

Dennis R. Yeager, Esq.
423 West 118th Street
New York, New York 10027

Dear Mr. Yeager

Served herewith are three copies of our Statement As To Jurisdiction in the above matter now pending in the Supreme Court of the United States.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By: MARC F. BOYER
Managing Attorney

Enc.
cp

Exhibit A-3

Telephone: 474-5240

November 20, 1972

Re: N. Y. S. Dept. of Social Services, *et al.* vs. Dolores Dublino, *et al.*

Gregory Stamm, Esq.
25 Delaware Avenue
Buffalo, New York 14202

Dear Mr. Stamm

Served herewith are three copies of our Statement As To Jurisdiction in the above matter now pending in the Supreme Court of the United States.

LOUIS J. LEFKOWITZ
Attorney General

By: MARC F. BOYER
Managing Attorney

Enc.
ep

Exhibit A-4

Telephone: 474-5240

November 20, 1972

Re: N. Y. S. Dept. of Social Services, *et al.* vs. Dolores Dublino, *et al.*

Philip Pinsky, Esq.
600 South State Street
Syracuse, New York 13202

Dear Mr. Pinsky

Served herewith are three copies of our Statement As To Jurisdiction in the above matter now pending in the Supreme Court of the United States.

LOUIS J. LEFKOWITZ
Attorney General

By: MARC F. BOYER
Managing Attorney

Enc.
cp

Exhibit B

MEMORANDUM

For: Julie Tkach
From: Marc F. Boyer

Re: N. Y. S. Dept. of Social Services, *et al.* vs. Dolores Dublino
Ewald B. Nyquist, *et al.* vs. Committee for Public Education and Religious Liberty, *et al.*

Please give us two $100 checks payable to the United States Supreme Court as a filing fee in the above matters.

Dated November 20, 1972.

Exhibit C

November 20, 1972

Re: Ewald B. Nyquist, *et al.* vs. Committee for Education and Religious Liberty, *et al.*

Hon. E. Robert Seaver
Clerk of the Supreme Court
of the U. S.
U. S. Supreme Court Building
Washington, D. C. 20543

Dear Mr. Seaver:

Filed herewith are 40 copies of Statement as to Jurisdiction together with a $100 check and Appearance Form with Affidavit of Service.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By: MARC F. BOYER
Managing Attorney

MFB/bh

In the Supreme Court of the United States

OCTOBER TERM, 1972

Supreme Court, U. S.
FILED
FEB 28 1973
MICHAEL RODAK, JR., CLERK

Nos. 72-792
72-802

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, et al.

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES, et al.,

Intervenors-Appellants,

vs.

DOLORES DUBLINO, et al.

Appellees.

On Appeal from the United States District Court for the Western District of New York

Brief of The State of California As Amicus Curiae on Behalf of Appellants

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In the Supreme Court of the

United States

October Term, 1972

Nos. 72-702
72-892

In the Supreme Court of the United States

OCTOBER TERM, 1972

Nos. 72-792
72-802

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, et al.

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES, et al.,

Intervenors-Appellants,

vs.

DOLORES DUBLINO, et al.

Appellees.

On Appeal from the United States District Court for the Western District of New York

---

Brief of The State of California As Amicus Curiae on Behalf of Appellants

---

INTEREST OF AMICUS CURIAE

This amicus curiae brief, which is sponsored by the Attorney General of the State of California, is submitted by the State of California on behalf of the California State Department of Human Resources Development and the California State Department of Social Welfare. The brief is submitted in support of the contention that Congress has not impliedly prohibited states from operating employment oriented programs containing work requirements for employable AFDC recipients.

California, like New York and all the other states of the Union, participates in the partially federally funded welfare program entitled Aid to Families with Dependent Children (AFDC) established by sections 401 et seq. of the Social Security Act (42 U.S.C. §§ 601 et seq.). A part of the AFDC program is the Work Incentive Program (WIN) established by sections 430 et seq. of the Social Security Act (42 U.S.C. §§ 630 et seq.). As its rationale for invalidating the New York program in this case, the District Court concluded that ". . . WIN preempts the Work Rules program."

California has a program called Community Work Experience Programs (CWEP), which is a project designed to give job training and work experience opportunities to those employable AFDC recipients for whom there is no available opening in WIN or other manpower training program.[1] There is pending in California the case of *Brian, et al. v. CWRO, et al.* (DC, CD Cal. Civil No. 72-1278-F) in which the validity of CWEP is at issue. The District Court's decision in this case has been cited by the opponents of CWEP as authority supporting their attempt to have CWEP declared invalid.

CONGRESS HAS NOT PREEMPTED THE FIELD OF EMPLOYMENT PROGRAMS

As indicated previously, the portion of the decision of the District Court in this case which is causing concern is the broad holding that Congress, by the enactment of the WIN provisions, intended to preempt employment programs containing work rules for those in the federally assisted AFDC category. That holding is erroneous.

---

1. CWEP has been operating successfully in California since June of last year, pursuant to authority granted by HEW under section 1115 of the Social Security Act (42 U.S.C. § 1315).

Initially, we point out the obvious, namely, that nothing enacted by Congress in the WIN provisions themselves or in any other statute expressly prohibits states from having programs which contain work or job-search requirements. Any federal prohibition, then, must arise by implication.

Congressional prohibition by implication is not lightly assumed. Congressional intent to preempt a field of law must be clearly and unequivocally shown. *Schwartz v. Texas*, 344 U.S. 199, 202 (1952). As stated by this Court in *Mintz v. Baldwin*, 289 U.S. 346, 350 (1933),

> "The purpose of Congress to supersede or exclude state action . . . is not lightly to be inferred. The intention so to do must definitely and clearly appear."

That general rule has direct application to the federal categorical aid programs, including the AFDC program. In *Jefferson v. Hackney*, 406 U.S. 535, 541, 545 (1972), this Court stated that state provisions dealing with AFDC programs will not be declared invalid unless they violate a specific provision of the Constitution or the Social Security Act.

There is no clear intent to preempt state work rules evidenced by Congress in the WIN provisions. The District Court's conclusion to the contrary is based on a complete failure to perceive the WIN program in the context of its operation as funded by Congress.

The WIN program is not now, nor has it ever been, a program which offered job training or public employment to *all* employable AFDC recipients. Last year, there were over 122,000 employable AFDC recipients in California. Yet there were only 18,000 WIN slots available in California. The situation was similar throughout the United States. It defies common sense to conclude that Congress, when it adopted provisions funding work and training opportunities for 18,000 employable AFDC recipients in

California, intended to impliedly prohibit California from having any employment program containing work or job search requirements for the remaining 104,000 employable AFDC recipients.

In that regard, it must be remembered that the New York program, like the California program, is not designed to place an ultimate burden on the recipient or to harass him or subject him to any penalty or sanction because he is a welfare recipient. To the contrary, the New York and California programs were developed with the hope and desire that their operation would ultimately benefit the unemployed, but employable, welfare recipient. The ultimate goal of the programs, like that of the WIN program itself, is to promote more actual employment for those recipients. Thus, in California the unemployed, but employable, AFDC parent is required to report initially to the employment service office, where his employment potential is evaluated and a job search plan developed. Thereafter, he reports to the employment office twice a month, at which time his job search efforts are evaluated. If there is an appropriate position in a WIN or other manpower training program available, he is placed in that program. As a last resort, if there is no actual employment available and there is no appropriate position in WIN or any other manpower training program available, he is requested to engage in a work experience activity for some public agency or nonprofit corporation doing work which will allow him to gain or retain work skills and maintain a history of work reliability which could be used by him to his advantage in his job search activities. Thus, there is some employment oriented activities for *all* employable recipients, not just the 10 to 20 percent thereof that can be accommodated in the WIN program. These supplemental programs cannot conflict with WIN because a recipient cannot be referred

to the supplemental program unless there is no appropriate WIN position available. It is utterly incredible to think that when Congress enacted the employment oriented WIN program and then funded it to such a limited extent that its benefits could only be offered to 10 to 20 percent of those potentially eligible, Congress intended to impliedly prohibit a state from enacting a supplemental beneficial program of its own.[2]

The District Court appears impressed by the complete and comprehensive nature of the WIN provisions. Again, the Court missed the point. Of course the WIN provisions are comprehensive. But they are only comprehensive as to those recipients for whom there are positions available in the program. The extensive WIN provisions dealing with job training, counseling and sanctions could only have application to those involved in the WIN program. It does not make sense to conclude that when Congress enacted comprehensive provisions which have a practical effect on only a small portion of the employable AFDC recipients in the state, that it intended to prohibit the state from having any employment oriented program at all which applies to the remaining employable recipients. For example, Congress might enact an extremely comprehensive and complex system for funding state programs for delivering treatment to 10 percent of the mentally retarded children in the state. Would one infer from that action that Congress impliedly prohibited the states from providing any care to the remaining mentally retarded children? Obviously not.

---

2. It is probably true that the person who feels the world owes him a living and who believes that he has the right to elect to collect welfare rather than accept employment will consider the New York and California programs as a complete "burden" with no ultimate "benefit." On the other hand, to the many individuals who want to find employment and eventually break the "welfare cycle," the programs do indeed provide a real ultimate "benefit."

Moreover, the recent amendments to the WIN program made in 1971 by the "Talmadge Amendments" (PL 92-223) make clear that Congress understands that the WIN program is not all-encompassing. As amended, Section 433 of the Act (42 U.S.C. § 633) provides for priorities in the carrying out of the WIN program. Thus, in filling vacancies in the WIN program, the state is directed to give priority to unemployed fathers, volunteer mothers, other mothers, dependent children and others in that order. By recognizing the need for placement priorities for participation in the WIN program, Congress recognized that there would not be sufficient facilities in the program for all employable AFDC recipients.

In making this argument, we are not unmindful of the decision of the Fourth Circuit Court of Appeals in *Woolfolk v. Brown*, 456 F.2d 652 (4th Cir. 1972) and the fact that this Court denied the petition for certiorari therein. .... U.S. ....., The language of the Court of Appeals in *Woolfolk* does indeed appear to suport the contention that the WIN program preempts all state employment oriented programs. However, the language of the Court went far beyond that necessary to reach the desired result in that case. In that case, the localities in which the plaintiffs resided were participating in the WIN program and there were vacancies in the program. However, the plaintiffs had been determined to be "inappropriate" for referral to WIN. Nevertheless, under the Virginia Work Rule, a recipient who was not appropriate for referral to WIN was required to accept employment, if offered. It is possible to reason that Congress, in enacting the WIN provisions, established, in effect, a distinction between *employable* AFDC recipients and *unemployable* AFDC recipients. It would not be unreasonable to conclude that Congress intended to prohibit the states from applying work rules to those who are *unemployable* under the congressionally

established guidelines. Based on such a conclusion, the result in *Woolfolk* is correct. It is a mistake, however, to blindly apply the broad language of *Woolfolk* without recognizing the factual context in which the statements were made. It is one thing to hold, in a case such as *Woolfolk*, that Congress has prohibited the states from applying work requirements to *unemployable* AFDC recipients. It is an entirely different thing to hold, as did the District Court in this case, that Congress impliedly prohibited states from having an employment oriented program for *employable* AFDC recipients for whom there is no space available in WIN or other manpower training program.

CONCLUSION

The problem of getting employable welfare recipients job ready, job oriented and into actual employment is one of the major problems facing our society today. It is a problem that is being wrestled with by Congress as well as various state legislatures and welfare departments. The holding of the District Court in this case that Congress has impliedly prohibited the states from implementing programs to supplement WIN and other limited federal manpower training programs, effectively prohibits the states from trying to solve that important problem.

The decision is wrong and should be reversed.

Respectively submitted,

EVELLE J. YOUNGER
Attorney General of the State of California

ELIZABETH PALMER
Assistant Attorney General

JOHN J. KLEE, JR.
Deputy Attorney General

Attorneys for Amicus Curiae State of California

IN THE

Supreme Court of the United States

October Term, 1972

Nos. 72-792, 72-802

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

v.

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

Onondaga County Department of Social Services and its Commissioner, JOHN L. LASCARIS,

Appellants,

v.

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Appellees.

On Appeal from the United States District Court For the Western District of New York

BRIEF FOR APPELLANTS, THE ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES AND ITS COMMISSIONER, JOHN L. LASCARIS.

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SPAULDING LAW PRINTING CO., SYRACUSE, N. Y.

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IN THE

Supreme Court of the United States

October Term, 1972

Nos. 72-792, 72-802

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE; NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS LEVINE; ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

v.

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

Onondaga County Department of Social Services and its Commissioner, JOHN L. LASCARIS,

Appellants,

v.

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

On Appeal from the United States District Court For the Western District of New York

---

BRIEF FOR APPELLANTS, THE ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES AND ITS COMMISSIONER, JOHN L. LASCARIS.

OPINION BELOW

The opinion of the District Court (Jurisdictional Statement of State Appellants, pp. 20-38) is reported at 348 F. Supp. 290.

JURISDICTION

An application made to the United States District Judge for the convening of a three-judge panel was granted on August 6, 1971 in an opinion which determined that the constitutional questions alleged in the complaint were "substantial" (A. 34-39 [1]). Following numerous depositions and other pretrial proceedings, the three-judge court received a stipulation of facts (A. 150-201), exhibits (listed at A. 202), and briefs and issued an opinion dated July 28, 1972. A final judgment was entered on August 25, 1972, (see Appendix to Jurisdictional Statement of State Appellants, pp. 41-43), [2] which enjoined the operation of a portion of certain New York Statutes and Regulations promulgated by the New York State Department of Social Services, upon the ground that the statute and regulations conflicted with the federal Social Security Act and were therefore invalid under the Supremacy Clause of the Federal Constitution. The district court also considered the constitutional questions alleged in the first three causes of action of the complaint (A. 30-31), and dismissed them, with one exception from which the state and county appellants have not appealed. (Jurisdictional Statement of State Appellants, p. 43).

Appeals by the defendants were lodged in this court in accordance with the Direct Appeal Statute, 28 U.S.C. §1253. This Court postponed consideration of the jurisdictional question to the hearing of the case on the merits.

1/ References are to the printed Appendix jointly filed in Nos. 72-792 and 72-802.

2/ A minor amendment to the final judgment was made by order dated October 18, 1972 (see Appendix to Jurisdictional Statement of State Appellants, pp. 44-45).

he issue of jurisdiction will be discussed in Point I of is brief.

STATUTES INVOLVED

The relevant provisions of the New York State Social rvices Law and regulations of the New York State Dertment of Social Services are set forth in the Appendix, . 47-49, 117-134, 214-215.

QUESTIONS PRESENTED

1. Did Congress intend the federal Work Incentive ogram to be the only program applicable to recipients AFDC and AFDC-U, and to preempt state programs d requirements for work referral of persons either not gible for referral under the WIN Program or for whom ere are no employment or training positions available der the federal programs?

2. Did Congress intend to permit employed persons quit their jobs or reduce their income without good use and nevertheless qualify for AFDC benefits?

STATEMENT

Plaintiffs, suing on behalf of themselves and their mir children, commenced this action seeking to have apters 101 and 102 of the New York Laws of 1971, and rules promulgated pursuant thereto, declared unconstitutional, alleging that they violated the Thirteenth endment to the Constitution of the United States, the e Process and Equal Protection Clauses of the Fourenth Amendment and so conflicted with the Federal Sol Security Act of 1935, as amended, that they were in lation of the Supremacy Clause of Article VI of the

Constitution. The complaint sought an injunction restraining enforcement and implementation of the statutes.

In brief, the Work Rules require employable recipients of public assistance, including recipients of Aid for Dependent Children (AFDC), to report semi-monthly to the New York State Employment Service to pick up their assistance checks and accept referrals to employment positions if available. A companion statute, §131(10) of the Social Services Law, enacted by Chapter 946 of the Laws of 1971, and its implementing regulations, §385.6 (A. 126), disqualifies for 30 days 3/ a person who voluntarily terminates employment without good cause.

The complaint (A. 17) did not expressly seek to enjoin the enforcement of §131(10) of the Social Services Law or Chapter 946 of the Laws of 1971, but the permanent injunction granted by the district court did enjoin the enforcement of all of part 385 of the State Regulations, which includes the regulation implementing §131(10) of the Social Services Law.

The District Court permanently enjoined and directed the defendants to cease all enforcement of the New York Work Rules against recipients of and applicants for AFDC in the State of New York.

The statutes in question had been enacted by the Legislature of the State of New York as a part of a welfare reform program recommended by the Governor in a Special Message to the legislature in March, 1971. The purpose of the legislation, according to Governor Rockefeller was:

> "to give greater opportunity and incentive to the individual to achieve independence, self-

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3/ The State's regulation construed federal law to limit the penalty to 30 days, the statute having allowed a 75-day penalty unless federal law otherwise provided.

sufficiency, and human dignity . . . My purpose in recomending far-reaching reorganization proposals is to see to it that we not only continue to meet the basic needs of those who cannot do for themselves, but that we also encourage the young and able-bodied, temporarily in need of assistance through no fault of their own, to achieve the education and the skills, the motivation and the determination that will make it possible for them to become increasingly self sufficient, independent citizens who can contribute to and share in the responsibility for their families and our society."

The basic philosophy of the work referral program was clearly stated by defendant Commissioner Wyman (Exhibit 44):

"Some people talk of work as a demeaning demand, a beyond-reason expectation that detracts and denies the individual the meaning ing of freedom and the exercise of choice. But work is not an obligation that makes less of a man, but rather it makes more of a man. When a man loses a job, he loses more than money. Work is more than a provision of income--although too many people interpret the work requirement as a cold and callous insistence that everyone must 'work or starve.'

"But work is more than doing a job, putting in time and collecting pay. Work is a source of interest, of friendship, and of activity that gives meaning and fulfillment to life. A graver consequence of loss of job, beyond the curtailment or elimination of income, is that an individual is likely to lose

confidence in himself. People ask what he is doing and where he works. He is reluctant to say he is not working because this might seem to be an admission that he is less effective than other people. His sense of his own prestige is diminished.

"So when work is made a requirement, it is not done in a punitive sense, because there is a personal need for being needed, of having personal worth, of having personal capabilities and talents which are utilized and made productive. Measured in these unchallengeable terms, the work requirement becomes even more important and more necessary to the individual, in addition to the entire system."

Subsequent to the enactment of the statutes, the State Department of Social Services adopted regulations for the implementation of the statutes (A. 117-134). The statutory definition of employable was further defined by the State Department of Social Services for the guidance of the local departments in making determinations as to employability under the statutes. That definition (Regulation 385.1) provides:

"Each ADC or HR applicant or recipient age 16 and over shall be deemed employable except by reason of:

(1) Full-time employment;

(2) Attendance at school including a vocational or technical school, a college or a university, for a minor other than an emancipated minor;

(3) Attendance full-time in grade or high school for an emancipated minor;

(4) Full-time satisfactory participation in

an approved program of vocational training or rehabilitation, which shall include but not be limited to participation in the work incentive program or a two-year college program with specific vocational objective;

(5) Part-time employment to the extent permitted by medical verification, or to the extent permitted by inability to secure adequate care for children or other incapacitated members except on a part-time basis;

(6) Mental or physical illness or incapacity medically verified to be of such significant or substantial nature as to prevent such person from engaging in employment; age shall be a basis of unemployability only when it is verified that the individual is potentially hazardous to himself or others with whom he is associated; and persons with a history of drug addiction shall be deemed employable only when determined medically to be free of drug use, or to be participating in a methadone maintenance program or a rehabilitation program; or,

(7) The need of such person to provide full-time care for other members of such person's household who are verified to be wholly incapacitated or who are children and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the social services district to obtain services or the assistance of others to provide such care."

In determining whether the mother's presence in the home is essential, the local social services district was explicitly instructed to consider:

"(1) The nature and extent of the incapacity; what effect the mother's absence would have on the health and welfare of the incapacitated person; whether other services or the assistance of others is available, and whether such alternative plans would adversely affect the incapacitated person.

"(2) The number of children in the home, their respective ages, the existence of illness, handicap or special needs; what effect the mother's absence would have on the health and welfare of the children; whether an adequate plan of child care is available; and whether such plan of child care would adversely affect the health and welfare of children." (A. 60)

If a public assistance recipient contests his classification as employable, he is entitled to a fair hearing on that issue, without having to first refuse a referral for employment and risk termination or grant reduction for noncompliance.

Subsequent to the initial implementation of chapters 101 and 102, problems which arose in connection therewith resulted in changes in the law and regulations. After the first six months of the operation of the program, the Department of Social Services adopted a new regulation to provide an exemption for semi-monthly reporting requirements for any person with a transportation hardship. In such case, either the local social services district may

arrange transportation for the recipient or provide for reporting by mail. Additionally, the 1972 Legislature made two statutory changes. It exempted from reporting requirements persons engaged in full-time training and vocational rehabilitation programs (Chapter 683, Laws of 1972) and provided that shelter allowances would be paid monthly, rather than as a part of the semi-monthly assistance payments (Chapter 685, Laws of 1972).

The main issue raised by this appeal is whether Congress, in enacting the WIN Program and in providing limited funding for it, intended that this work referral program should supersede and preempt state programs of broader supplemental application. The State of New York does not take the position that persons eligible for and referable to WIN should not be so referred. In fact, the witnesses for the social services departments, State and local, all stated that where public assistance recipients were eligible for WIN referrals and where there were WIN slots available for them, such recipients must be referred to WIN and not through the State program. In intention and operation, therefore, the State program was intended to supplement WIN.

In New York, the WIN Program is restricted geographically in the sense that it exists in only 12 of the State's 58 social services districts. The actual designation of only 12 districts in which the WIN Program is to operate was made by the United States Secretary of Labor. The request of the New York State Department of Social Services that the Federal Labor Secretary expand the WIN program, by designation of additional social services districts for the program, was denied. Unlike New York State's Social Services Law work referral provisions, the WIN program by Federal design is restricted to specific areas of the State. Concededly, these 12 districts included 90 percent of the total number of welfare recipients in the State of New York.

However, the 12 social services districts which have a WIN Program in operation were also limited to a total slot allocation of 16,800 persons. Initially, when the program was implemented in New York in 1968 there were 14,800 slots authorized. In April, 1972, the slot allocation was increased to the present level of 16,800. Under the revised WIN Program, effective July 1, 1972, it is estimated that there are 75,000 registered AFDC recipients who are potential WIN participants but the program will not have the capacity to accommodate all of them.

Appellant has just learned that during the latter part of 1972, the State entered into a new contract with the United States Department of Labor which may expand the number of persons able to participate in the WIN Program; but the number of counties involved in the WIN Program will not expand.

The disparity between the effectiveness and scope of the Federal and State programs is apparent from the fact that in the period from January through June, 1972 there were a total of 2,657 job placements under the WIN Program, as compared with a total of 5,323 placements in the same period under the State's work referral program, even though the WIN Program is operating in those districts having 90% of the total number of welfare recipients in the State.

In fiscal 1971, the New York State Department of Social Services referred 17,511 individuals for participation in the WIN Program. However, in that fiscal year, the Federal government allowed only 9,600 opportunities for enrollment in the WIN Program in New York State. Since the State work requirement was enacted, referrals to the State Employment Service increased twelvefold. Between November, 1971 and June, 1972, there were approximately 125,000 referrals under the work referral program. Compare that figure with the yearly total referrals under

the Federal WIN Program:

Fiscal Year	68-69	9,127
	69-70	16,992
	70-71	17,511

From those figures it can be seen that, as a matter of fact, the WIN Program does not, in operation, occupy the entire field of work referral, nor does it occupy even a major percentage of that area.

SUMMARY OF ARGUMENT

The federal WIN Program was not intended to preempt employment and job training rules applicable to AFDC recipients. The state's program is supplemental to WIN, because any person eligible for WIN must be referred to that program.

The plain language of §402(19)(F) of the Social Security Act would seem to authorize state employment rules not limited to employment procured through WIN.

The U. S. Department of Health, Education and Welfare has advised the federal courts that it does not understand the WIN rules to preempt State work rules aimed at achieving the identical goal through other, non-conflicting mechanisms.

WIN is limited as to federal funds and does not operate in all social services districts. Congress did not intend to preclude other work programs for persons not enrolled or participating in WIN.

The State Work Rules contain adequate procedural safeguards, including fair hearings. Mothers may not be referred without adequate child care plans, although both the mother and the social services district must make "diligent efforts" to obtain such child care.

In short, there is no clear manifestation of a congressional intent to supersede State work requirements.

In any event, the district court should not have enjoined state regulations which preclude AFDC recipients from quitting existing jobs without good cause.

ARGUMENT

I.

If the Complaint contains "substantial" constitutional questions, then this Court has jurisdiction over the direct appeal; if not, then the case should be remanded with directions to dismiss the Complaint for want of jurisdiction.

The plain import of this Court's order postponing the question of jurisdiction is that the question should be fully briefed. Rule 16, Par. 6 of this Court; Slagle vs. State of Ohio, 366 U.S. 259 at 264 (1961).

One requirement for the convening of a three-judge court is that the constitutional question presented be substantial. See Flast vs. Cohen, 392 U.S. 83 at 91, fn. 4 (1968). It seems well settled that if the three-judge court has jurisdiction by reason of the presence of a substantial constitutional question, its jurisdiction extends over all other grounds of attack against the State Statute, including a preemption claim. The joining in the complaint of a nonconstitutional attack along with the constitutional one does not dispense with the necessity to convene a three-

judge court. Florida Lime & Avocado Growers, Inc. vs. Jacobsen, 362 U.S. 73 at 80-81, 84 (1960); U.S. vs. Georgia Public Service Commission, 371 U.S. 285 at 287-288 (1963); Paul vs. U.S., 371 U.S. 245 at 250 (1963); Zemel vs. Rusk, 381 U.S. 1 at 5-6 (1965); Flast vs. Cohen, 392 U.S. 83 at 90-91 (1968).

Once convened, the case can be disposed of in the District Court or in the Supreme Court on any ground, whether or not it would have justified the calling of a three-judge court. U.S. vs. Georgia Public Service Commission, supra, 371 U.S. at 287-288. Indeed, in Rosado vs. Wyman, 397 U.S. 397 (1970), this Court held that the three-judge court was obliged to adjudicate the statutory claim in preference to deciding the original constitutional claim (397 U.S. at 402). 4/

Nothing in Swift & Company vs. Wickham, 382 U.S. 111 (1965) changed these well settled principles. In that case the Court held that the constitutional claims alleged in the complaint were "too insubstantial to support the jurisdiction of a three-judge court." (382 U.S. at 115). Thus, the only remaining basis for enjoining enforcement of the state statute was its asserted conflict with the federal statute. On that state of facts, the Court held that no three-judge district court was required. But the Court

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4/ The further holding in Rosado vs. Wyman that the three-judge court had power to remit the supremacy issue to a single district judge is not inconsistent with the cited decisions of this Court. Rosado did not hold that such remand to a single district judge was mandatory. In the instant case, pending in the Western District of New York and not in one of the more populated districts, the three-judge court properly exercised its discretion to retain jurisdiction over the supremacy question.

was careful to distinguish Florida Lime & Avocado Growers, Inc. vs. Jacobsen, supra, in fn. 17 of its opinion, (382 U.S. at 122), and the Court has cited and followed the Florida Lime case in the several cases cited above, including Flast vs. Cohen, supra, which was decided three years after Swift vs. Wickham, supra.

As to whether the complaint presents a substantial constitutional question, it will be recalled that the District Court below determined this question in the affirmative (A. 38). Those constitutional questions have been briefed by the plaintiffs in their jurisdictional statement on their cross appeal in No. 72-5939, and by the state appellants on their motion to dismiss or affirm the plaintiffs' appeal. As of the writing of this brief, the Court has not determined that motion or noted probable jurisdiction.

If the Court should find that the constitutional questions pleaded in the complaint are so insubstantial as to compel reading them out of the complaint (see Zemel vs. Rusk, supra, 381 U.S. at 6), then there would be presented the further question as to whether the District Court lacked subject matter jurisdiction over this action. Plaintiffs have relied upon 42 U.S.C. §1983, and its jurisdictional compliment, 28 U.S.C. §1343. The Court of Appeals for the Second Circuit held recently that to establish jurisdiction under 28 U.S.C. §1343(3), "a substantial constitutional claim must be advanced". Hagans vs. Wyman, __F. 2d__, decided January 3, 1973, citing Almenares vs. Wyman, 453 F.2d 1075, 1082 (2d Cir. 1971), cert. denied, 405 U.S. 944 (1972). In the Almenares opinion, the Court of Appeals said that it regarded the substantial constitutional claim requirement "as essential for jurisdiction under §1343(3) in the circumstances here presented, since in our view the Social Security Act is not an 'Act of Congress' providing for equal rights of citizens or of all persons within the jurisdiction of the United States" (453 F. 2d at 1082, fn. 9).

If there was a complete lack of subject matter jurisdiction in the District Court, whether composed of one or three judges, the Supreme Court has power on a purported appeal under §1253 to reverse the judgment of the three-judge court and remand the case with directions to dismiss the complaint for want of jurisdiction. Piedmont & Northern R. Co. vs. U.S., 280 U.S. 469 (1930); cf. Bailey vs. Patterson, 369 U.S. 31 (1962).5/

Finally, if for any reason the Court should hold that the three-judge court was improperly convened but that a single-judge district court would have subject matter jurisdiction under 28 U.S. Code §1343(3) or otherwise, then appellant would request the Court to vacate the final judgment and remand the case to the District Court so that it may enter a fresh judgment from which appellants may perfect timely appeals to the Court of Appeals. Phillips vs. U.S., 312 U.S. 246 (1941); Pennsylvania Public Utility Commission vs. Pennsylvania R. Co., 382 U.S. 281 (1965); Wilson vs. City of Port Lavaca, 391 U.S. 352 (1968); Rockefeller vs. Catholic Medical Center, 397 U.S. 820 (1970); Board of Regents vs. New Left Education Project, 404 U.S. 541 (1972).

5/ The appropriate standards for determining the existence of a "substantial" constitutional question have been the subject of several fairly recent and not entirely consistent decisions by Courts of Appeals, who are obviously troubled by this requirement and the application thereof to specific cases. See, e.g. Johnson vs. New York State Education Department, 449 F.2d 871 (2d Cir. 1971), remanded to determine mootness, __U.S. __ (1972).

II.

The Federal Work Incentive Program was not intended to preempt State Employment and Job Training Rules that purport to govern eligibility for AFDC and AFDC-U Benefits.

The District Court's judgment directed the defendants to "cease all enforcement of the New York Work Rules against recipients of and applicants for AFDC in the State of New York." (Final Judgment, Par. 2). The practical effect of that judgment is two-fold. First, the state is precluded from requiring unemployed but employable AFDC applicants or recipients to accept appropriate employment and job training other than in the WIN Program. Secondly, the state is precluded from withholding assistance to any AFDC applicant or recipient who voluntarily terminates existing employment. Thus, the judgment appealed from authorized thousands of AFDC recipients in the State of New York who are clearly employable persons, with adequate child-care plans but who are not WIN participants, to refuse available employment, and, indeed, even to quit existing employment, to sit idle without any good cause and collect public assistance.

The District Court apparently concluded that any state requirement precluding an AFDC recipient from terminating existing employment without good cause was an additional eligibility standard not authorized by the Federal Social Security Act and therefore invalid under Townsend vs. Swank, 404 U.S. 282 (1971) and similar cases.

It is submitted that inadequate weight was afforded to the plain language of 42 U.S.C. §602 (19)(F), whereby individual aid may be reduced (or, in one instance eliminated) whenever an individual has been found by the Secretary of Labor to have refused without good cause to

ticipate in a project established under the Work Incen-
e Program, or has "refused without good cause to ac-
t employment in which he is able to engage which is
ered through public employment offices of the State, or
otherwise offered by an employer if the offer of such
ployer is determined, after notification by him, to be
ona fide offer of employment". This statute is not
ited to employment procured through the WIN Program.
Aguayo vs. Richardson, __F. 2d__, decided January
1973, the Court of Appeals for the Second Circuit
nted to this issue at p. 1587 of its slip opinion. The
urt said that §602(a)(19) appears to have been general-
read as limited to persons participating in WIN Pro-
ms, citing only Woolfolk vs. Brown, 325 F. Supp. at
9. The Second Circuit, however, assumed, without
iding, that the Woolfolk construction of the statute was
rect (Slip opinion, p. 1587). Examination of the Wool-
k opinion at page 1169 does not disclose any substantial
son requiring such a limited interpretation of §602(a)
). An intent to allow employed AFDC recipients or ap-
cants to quit existing jobs without good cause should
be imputed to Congress in the absence of the clearest
gressional statements of intent. This Court has al-
ys required a clear manifestation of congressional in-
tion to supersede the exercise of power by a state.
wartz vs. Texas, 344 U.S. 199 at 202 (1952); Florida
ne & Avocado Growers, Inc. vs. Paul, 373 U.S. 132
63) at 146.

Accordingly, the State of New York should not have
n enjoined from enforcing that portion of its regula-
n 385.6 (A. 126) [renumbered 385.7] which penalizes
erson who voluntarily terminates employment or re-
es his earning capacity for the purpose of qualifying
assistance or a larger amount thereof. It may be
ed that in New York, unlike the Virginia Work Rules
Woolfolk vs. Brown, supra, non-compliance affects
y the eligibility of the person who refuses to comply,

not the eligibility of the entire family.

The District Court relied upon 42 U.S.C. §602(a)(8), which disallows the so-called 30-1/3 exemption of earned income to any person who in the preceding 30 days has either deliberately reduced earning capacity, quit a job or refused to accept employment offered him by the State Employment Service. The fact that Congress installed a penalty in connection with the enactment of the income exemption does not demonstrate that Congress intended this penalty to be exclusive, or to preclude the loss of all welfare assistance for thirty days, which is the penalty imposed by New York Law. Indeed, the loss of the income exemption to an unemployed person without any income is hardly a penalty.

A second instance involving clear congressional approval of state work requirements, apparently overlooked by the court below, is found in the federal statute relating to the AFDC-U program. It is clear from paragraph 1 of the District Court's final judgment that the Court intended to enjoin application of the New York Work Rules to all applicants for and recipients of AFDC-U (The Unemployed Parent Program). Yet the Court below did not even discuss 42 U.S. Code §607(b), which requires a state plan for such program to preclude assistance to any father who "has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment". No consideration was given to a pertinent report of the Senate Committee on Finance relating to §607(b) which report stated:

> Your committee's bill, as does the House-passed bill requires that a State agency administering the expanded aid to dependent children program must enter into cooperative arrangements with the State agency administering the public employment offices looking toward the

employment of the unemployed parents of the children receiving aid. The arrangements which the State public assistance agency will need to have with the employment service must include provisions for appropriate registration for work and periodic reregistration of the unemployed parent of a child and for otherwise making maximum utilization of the job placement services and other services and facilities of the employment office. The purpose of this provision is, so far as possible, to secure employment for the unemployed person in any jobs that may be available which there is not good cause for him to refuse as determined by the State.

Your committee believes that an unemployed individual whose family is receiving aid under this program should accept any reasonable offer of employment. Accordingly, the bill would require that a State plan include provisions to assure that aid is not provided if, and for as long as, the unemployed parent refuses without good cause to accept employment in which he is able to engage. Considerable latitude would be left to the State in determining the period during which assistance would be denied. It is not intended to permanently disqualify the family during subsequent periods when no offer of employment is available. The state would determine whether the parent had good cause for refusing an offer of employment.

(87th Cong., 1st. Sess., p. 3 (1961)).

he Court below also did not have the benefit of the s of the United States Department of Health, Educa- and Welfare with respect to the alleged conflict

between the Federal Work Incentive Program and the New York State Work Rules. However, in another case raising substantially the same issues, Jefferies vs. Sugarman, on appeal to the Court of Appeals for the Second Circuit, the U. S. Department of Health, Education and Welfare submitted a brief in response to a request from the Panel contending "that there is no federal rule or policy which prohibits a state from imposing non-WIN work requirements for AFDC, although, of course, such requirements could not be such as to distort the operation or defeat the purposes of the WIN Program...HEW continues to regard such work requirements as permissible under the terms of the Social Security Act and implementing federal regulations. Indeed, independent State initiatives aimed at encouraging welfare applicants and recipients to accept paying jobs as a complete or partial alternative to public assistance would appear to advance rather than undermine the overall congressional objective implicit in the WIN Program, both by filling in gaps in particular WIN programs and by promoting the goal of employment in areas where the WIN Program has not yet been fully developed." The HEW brief specifically noted the opinion in the Court below, as well as the opinion in Woolfolk vs. Brown, 325 F. Supp. 1162, affirmed, 456 F. 2d 652 (4th Cir. 1972), cert. denied, __U.S.__(1972). HEW said "We do not agree with this interpretation of the federal statute, and believe that the cases cited were wrongly decided." With respect to the 1971 amendments to the WIN Program, commonly known as the Talmadge Amendments, HEW argued that:

> "The main purpose of these changes was obviously to strengthen the federal aspect of the WIN program and to tighten up its operation by the states. There is, however, nothing in the legislative history of the Talmadge amendments to suggest a congressional purpose to reduce or eliminate the area of permissible non-WIN state

work requirements for AFDC. In fact, given Congress' obvious interest, as evidenced by the Talmadge amendments, in stimulating greater efforts in the direction of developing the employment potential of welfare recipients through the WIN program, it would be fanciful to conclude that Congress was concerned at the same time to restrict state activity aimed at achieving the identical goal through other, non-conflicting, mechanisms.

Since the Talmadge amendments were enacted primarily to reinforce federal control over the content of state WIN programs, and not to preempt independent state work requirements, the argument advanced in the attached Woolfolk brief that WIN does not occupy the field of AFDC-related work programs is as applicable now as it was when it was written. Thus, it is still our view that the mere existence of the WIN program under the Social Security Act does not render non-WIN state work requirements invalid."

Congress knew that under 42 U.S.C. §632(a), the Secretary of Labor would establish work incentive programs only in those state political subdivisions in which the Secretary determined "there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children" and that "in other political subdivisions, he [the Secretary of Labor] shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established." In New York State, the WIN Program was established by the Secretary of Labor in only 12 of the state's then 64 (now 58) social services districts. The Secretary refused to

authorize additional WIN Programs in the other districts. Adequate transportation is not available to enable recipients in districts without WIN Programs to travel to one of the 12 available programs. Yet, the district court's judgment precludes the state from implementing its work referral program even in those districts in which there is no WIN Program in operation.

Between 1967 and 1972, the 12 WIN Programs in operation in the State of New York were only authorized to service a maximum of 16,800 persons. Yet, there were an estimated 75,000 or more registered AFDC recipients who were potential WIN participants but who could not be served because the WIN Program did not have capacity to accommodate them. Appellant has just learned that the New York State Department of Social Services and the U.S. Department of Labor recently entered into a contrace which will permit more persons to be serviced under the WIN Program. But the vicissitudes in the annual availability of federal funds to provide sufficient slots in the WIN Program merely serves to emphasize that Congress in 1967 did not intend to have the question of preemption turn upon the sufficiency of funds available in future years. It is far more likely that Congress did not intend to preclude the states from requiring AFDC recipients not enrolled in and participating in the WIN Program to comply with another work referral program.

The court below noted that "As an incentive, WIN enrollees in assessing their welfare needs are permitted to disregard the first $30.00 of their monthly earned income and one-third of the remainder." (State appellants' Jurisdictional Statement, p. 26). But all earned income of AFDC recipients is subject to the so-called 30 and one-third exemption under the State's regulations. 18 N.Y.C.R.R., §352.20(b)(2).

The court below noted that "Compulsory referral of the aged, or those required at home for other reasons,

is prohibited" (State appellants' Jurisdictional Statement, p. 26). But the state statute and state regulations contain similar exemptions. 18 N.Y.C.R.R., §385.1(a); State Social Services Law, §131, subdivision 4.

The court below held that "in contrast to the complex WIN referral procedures, with the use of appropriateness determinations, employability teams, and personal development plans, the screening procedures of the Work Rules are substantially less elaborate." (State appellants' Jurisdictional Statement, pp. 26-27). The court noted that one study of the state's program had found over 67% of a sample of persons to have been improperly referred to the state employment service because they were in fact unemployable. The short answer is that the state required its local social services districts to implement the new Work Rules Program in 1971 on very short notice of less than a month; and it is not surprising that administrative errors may have occurred in some local social services districts. But those errors were remedied when they were discovered or when the welfare recipients complained. In other cases, temporary restraining orders as to such persons were obtained by the plaintiffs in this proceeding and the local districts were not even afforded an opportunity to take other action on those cases. In any event, the initial administrative burden of implementing the Work Rules as to tens of thousands of recipients was overcome and there is no substantial reason why any initial administrative errors in some localities should form a basis for permanently enjoining the operation of the entire state program for all time.

The court below noted that "Adequate child care must be assured for working mothers as a precondition of WIN referral." (State appellants' Jurisdictional Statement, p. 26). But the state's program contains virtually identical assurances of adequate child care in 18 N.Y.C.R.R., §385.3(b)(3). A 1972 amendment to §131, subdivision 4

of the State Social Services Law provides:

> "For the purposes of this subdivision and subdivision five, a person receiving or applying for aid to dependent children shall be deemed employable in accordance with the provisions of section three hundred fifty-e of this chapter, except that a mother who is unable to work by her need to provide full-time care for her children, and for whom required care is not otherwise reasonably available notwithstanding diligent efforts by such mother and appropriate social services department to provide such care shall not be deemed employable." (Chapter 941 of the Laws of 1972).

Plaintiffs have argued that the New York Work Rules impose an unlawful condition with regard to child care insofar as those rules require the employable mother to make "diligent efforts" to secure such care. Actually, the law as amended requires concurrent diligent efforts by such mother and the appropriate social services department. There is nothing, in any event, in the federal WIN statute that would exonerate a mother from making diligent efforts to obtain child care so that she may participate in a work referral program, under WIN or otherwise. Plaintiffs' criticism of the "diligent effort" requirement is ample evidence that plaintiffs are most interested in obtaining a public assistance program under which mothers are exempt from any work requirements, by the device of claiming that they do not have child care available to them. It is submitted that the "diligent effort" requirement under state law was eminently fair and reasonable and does not impose any undue hardship upon any AFDC recipients.

The administration of the "diligent effort" requirement with respect to child care is also pertinent. In Onondaga County, for example, the testimony shows (A. 11, Docket

entry for January 18, 1972, deposition of Philip C. Pinsky) and exhibit 27 (A. 204) confirms that since child care demand far exceeded its supply, the County Department of Social Services did not attempt to treat as "employable" any mother who failed to obtain child care by her own efforts. This administration of the statute demonstrates that the "diligent effort" requirement can be reasonably administered without substantial detriment to AFDC mothers. Obviously, there is always the possibility of administrative error, but fair hearings required under state and federal law are available to correct those errors, if they should occur.

The court below noted that "Under WIN, the recipient is entitled to a hearing, prior to referral, on the issue of appropriateness of referral." (State appellants' Jurisdictional Statement, p. 26). But the state's practices afforded a fair hearing on the issue of employability under the state referral program, as the court noted in its opinion (State appellants' Jurisdictional Statement, pp. 32-33). A recipient may test the correctness of his classification as an employable person without first being discontinued from public assistance. There is no substantial conflict, then, in this regard between the WIN Program and the state's program.

In a case recently decided by the Court of Appeals for the Second Circuit (Aguayo vs. Richardson, decided January 18, 1973), the Court was concerned by the provisions of New York State's regulation 385.7. (formerly regulation 385.6 and printed at A. 126) which provides that if a recipient refuses employment, he shall be disqualified for thirty days thereafter and until such time as he is willing to comply. The Court said "This seems to mean that even if the recipient accepts the determination of the hearing and is willing to take a referral immediately, he would nevertheless be deprived of assistance for 30 days" (slip opinion, p. 1591). The Court refrained

from deciding the problem on the motion for a temporary injunction, in light of an almost "total absence of briefing" by the state defendants (slip opinion, p. 1593). But the Court did pose the problem as follows:

> "The question of the constitutionality of §385.7 has its difficulties. Presumably, the argument in favor of the thirty-day suspension is that it constitutes the only effective sanction against the assertion of claims for a hearing in every case, with a consequent breakdown of the entire work program, since otherwise an adverse determination would simply require the recipient to do what he should have done long before. Yet, a somewhat similar argument concerning proliferation of hearings did not win favor in Goldberg vs. Kelly, 397 U.S. 254, 265-66 (1970), on the issue there presented. Appellants argue that the necessitous circumstances of welfare recipients make the risk of a thirty-day suspension, even for the one family member concerned, totally unacceptable; as a practical matter, the suspension thus operates as a denial of a hearing before an unemployable recipient, or one with good cause for refusal, is forced to accept employment, with possible drastic results for his children." (Slip opinion, pp. 1592-1593).

The Onondaga County appellant is not in a position to bind the State of New York on an appropriate construction of the state's regulation 385.7 that might resolve this issue.

If there is any deficiency on this score, or with any other specific aspect of the work rules that can be excised without invalidating them entirely, the Court is urged to prune the offensive portions without enjoining the entire statute and regulations.

Plaintiffs claimed at page 25 of their motion to dismiss or affirm that the WIN Program provides "extensive services" to participants. As the Court of Appeals noted in Aguayo vs. Richardson, supra, slip opinion at 1578-79, fn. 23, the WIN Program in no way guarantees the availability of these services. The Court said:

> "Indeed, the HEW WIN Handbook, §80.6 (1972) states that the only service which must be provided before certification under 42 U.S.C. §602(a)(19) is a medical examination, and that the only service which must be available before entering a work project is child care."

Both of those services are provided in New York State.

Finally, it bears repetition that the state program does not supersede the WIN Program and that persons eligible for WIN must be referred to WIN whenever there are WIN slots available. This means that the persons subject to state penalties not exactly paralleling the WIN Program--as, for example, the lack of a 60-day counselling period prior to termination of assistance--are not WIN participants and are not entitled to every procedural protection designed for WIN participants. Certainly, the variance in the procedural requirements between the state program and the WIN Program is not a sufficient basis for finding that the state program is barred by the Supremacy Clause.

It is anticipated that other alleged conflicts between the State Work Rules and the WIN Program will be discussed in the brief of the State appellants. No good purpose will be served by duplicating those arguments.

CONCLUSION

The judgment of the District Court should be reversed, or in the alternative the case should be remanded with instructions to dismiss the complaint for want of jurisdiction.

Respectfully submitted,

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(43-D)

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

Nos. 72-792, 72-802

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES; its Commissioner, ABE LAVINE: NEW YORK STATE DEPARTMENT OF INDUSTRIAL RELATIONS; its Commissioner, LOUIS L. LEVINE: ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, GEORGE C. SIPPRELL,

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,

Intervenors-Appellants,

against

DOLORES DUBLINO, DORIS JIMERSON, VIRGINIA MICHAEL, JANIE LEE PHILLIPS and MARIA MARFOGLIA, on behalf of themselves and their minor children,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANTS NEW YORK STATE DEPARTMENTS OF SOCIAL SERVICES AND LABOR AND THEIR COMMISSIONERS

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Citation to Opinion Below

The opinion of the United States District Court for the Western District of New York is reported at 348 F. Supp. 290 (printed in Appendix to Jurisdictional Statement of Appellants).

Jurisdiction

The appeal herein is from a final judgment made and entered in the United States District Court for the Western District of New York by a specially constituted three-judge panel convened therein under 28 United States Code, §§ 2281 and 2284. The judgment holds the "New York Work Rules", comprising sections 131 (4) and 350-k of the New York Social Services Law, as added by Chapters 101 and 102 of the New York Laws of 1971, and the rules of the New York State Department of Social Services, adopted pursuant thereto and in implementation thereof (18 NYC RR, § 385.1 *et seq.*) unconstitutional insofar as they apply to applicants for and recipients of Aid to Families with Dependent Children (ADC). They were found to be unconstitutional on the ground that the State statutes and rules conflict with the Federal statutes relating to the Work Incentive Program (WIN) (42 U. S. C. §§ 602 (a) (10), 602 (a) (19) and 630 *et seq.*) and thus to be in violation of the Supremacy Clause of Article VI of the Constitution of the United States. The judgment enjoins the defendants (appellants here) from further implementation of the Work Rules as to ADC applicants and recipients.

The complaint sought declaratory and injunctive relief against enforcement of Chapters 101 and 102 of the New York Laws of 1971, and the rules adopted pursuant thereto, alleging that the statutes violated the Thirteenth Amendment to the Constitution of the United States, the Due Pro-

cess and Equal Protection Clauses of the Fourteenth Amendment, and conflicted with Federal statutes in violation of the Supremacy Clause of Article VI of the Constitution. Thus, while the Court below held the statutes unconstitutional only under the Supremacy Clause, there were also involved in the action, and considered by the District Court, issues under the other provisions of the Constitution of the United States invoked by the plaintiffs.

The New York statutes and rules provide for the referral of persons, deemed to be employable under the definition contained in New York Social Services Law, § 131 (4) and who are recipients of or applicants for public assistance, to the appropriate offices of the New York State Employment Service (SES) for job referral and manpower services, require semi-monthly reporting for such referral require recipients of public assistance to pick up assistance checks at the same employment office, and further provide for public works employment for persons not placed in regular employment.

The final judgment granting the relief sought in the complaint was made and entered August 25, 1972. Notice of Appeal to this Court on behalf of the State defendants was filed on September 28, 1972 in the United States District Court for the Western District of New York. Notices of appeal were also filed on behalf of the plaintiffs, the Erie County defendants, and the Onondaga County intervenor-defendants.

The appeal on behalf of the State defendants was docketed November 29, 1972; that of the Onondaga County defendants on December 1, 1972. On January 15, 1973 this Court directed argument on the merits but reserved decision as to jurisdiction (this Court has not yet acted upon the plaintiffs' appeal).

This Court has jurisdiction to review by direct appeal the final judgment above cited pursuant to the terms of 28 United States Code, Sections 1253 and 2101 (b). This Court also has jurisdiction to review the final judgment since, not only the complaint raised issues other than the Supremacy Clause, but also the Court below in its opinion considered at length the allegations and evidence concerning issues under the Thirteenth and Fourteenth Amendments to the Constitution of the United States. The only issue before the District Court was not, therefore, the Supremacy Clause of the United States Constitution. If this Court were to find that those other constitutional issues were not substantial, then the District Court itself had no jurisdiction in this case (*Hagans* v. *Wyman*, __ F. 2d __ [2nd Cir., Jan. 3, 1973]).

Constitutional and Statutory Provisions Involved

On this appeal, the only provision of the Constitution of the United States which is involved is the Supremacy Clause of Article VI.

New York Social Services Law (McKinney's Consolidated Laws of New York, Vol. 52-A), section 131 (4), as amended by Chapters 102 and 298, § 5 of the New York Laws of 1971, and as in effect when this action was commenced, provided:

> "4. No assistance or care shall be given to an employable person who has not registered with the nearest local employment agency of the department of labor or has refused to accept employment in which he is able to engage.
>
> "A person shall be deemed to have refused to accept such employment if he:
>
> a. Fails to obtain and file with the social services district at least once in every two-week period a new

certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

b. wilfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

c. wilfully fails to report to such office the result of a referral to employment, or

d. wilfully fails to report for employment. Such wilful failures or refusal as above listed shall be reported immediately to the social services district by such employment offce.

"For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

"Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabilitation shall receive his public assistance grants and allowances in

person from the division of employment of the state department of labor, in accordance with regulations of the department."

(Subdivision 5, referred to above, provides for referrals by the State Employment Service for vocational training.)

At its 1972 Session, the New York State Legislature amended section 131(4) to exempt persons engaged in full-time training and vocational rehabilitation programs from the reporting and check pick up requirements (Chapter 683, NY Laws of 1972). The New York Legislature further amended the statute to provide that shelter allowances would be paid monthly, rather than divided within the semi-monthly assistance payments (Chapter 685, NY Laws of 1972).

New York Social Services Law, § 350-k, as added by Chapter 101 of the New York Laws of 1971, provides for public works project employment for employable recipients of ADC who are not able to be placed in regular employment. (The full text of Chapter 101 is set forth in the appendix to this brief.) The public works projects so provided for are required to meet State and Federal requirements and to be established for the conservation of work skills, and/or the development of new skills of parents and other eligible relatives receiving ADC. The statute sets up standards of safety, compensation, and maximum number of days to be worked. No person may be required to work longer than necessary to earn the amount of his public assistance grant, or longer than eight hours in a day or forty hours in a week. Additionally, he must be given adequate time to seek employment in the regular economy. Because of Federal agency objections, section 350-k has never been implemented by the State of New York.

Question Presented for Review

Where, by determination of the United States Secretary of Labor, the Federal program for work and training referral of public assistance recipients (WIN) is not in operation in all welfare districts of the State and where, in those districts in which the program is in operation, the opportunities for referral of public assistance recipients have been limited by operation of Federal law and funding to only a fraction of the unemployed employable public assistance recipients, and Congress has not specifically stated that the WIN Program is the exclusive vehicle for job referral of such persons, can the State adopt programs and requirements for work referral and for public works employment of persons not eligible for referral under the Federal statute or for whom there are no employment or training positions available under the Federal program?

Statement of the Case

A. Factual Background

Plaintiffs, suing on behalf of themselves and their minor children, commenced this action seeking to have Chapters 101 and 102 of the New York Laws of 1971, and the rules promulgated pursuant thereto, declared unconstitutional, alleging that they violated the Thirteenth Amendment to the Constitution of the United States, the Due Process and Equal Protection Clauses of the Fourteenth Amendment and so conflicted with the Federal Social Security Act of 1935, as amended, and particularly with the WIN Program, that they were in violation of the Supremacy Clause of Article VI of the Constitution. The complaint sought a permanent injunction restraining the enforcement and implementation of the statutes.

The action was commenced by Order to Show Cause on July 1, 1971, the effective date of the statutes. Temporary restraining orders were signed by the Court as to the five original plaintiffs and, after the action had been determined by the Court to be a class action, temporary restraining orders were granted to approximately fifty other members of the plaintiff class, on motions by plaintiffs' attorneys, and denied to other members of the class. Restraining orders as to the entire class were denied (39).* Plaintiffs included in the temporary restraining orders reside in Erie (Buffalo), Onondaga (Syracuse), Cattaraugus, Broome (Binghamton), Orleans, Wyoming, Sullivan, Albany, Rensselaer, Rockland and New York Counties. The plaintiffs, on whose behalf the orders were issued, thus represented a geographic cross-section of the State and presumably also the range of difficulties and complaints concerning the implementation of the State Work Rules (156-187).

On Monday, March 29, 1971, Governor Rockefeller sent to the New York State Legislature a Special Message relating to the problems of welfare and welfare reform and recommending legislation to meet the problems and to cope with new objectives. In that Message he stated as to the general issues involved in the legislation at issue in this case (Ex. 38, p. 3):

> "• • • I am recommending a complete reorganization conceptually and structurally, of the welfare program for New York State in order to give greater opportunity and incentive to the individual to achieve independence, self-sufficiency, and human dignity.
>
> "Many aspects of the present welfare system actually undermine rather than strengthen the dignity and

* Numbers in parentheses, unless otherwise stated, represent page numbers of the printed Appendix.

self-respect of the individual and discourage the desire and initiative to work, to achieve self-sufficiency and independence and to accept responsibility.

• • •

"The result is that we are actually encouraging a larger and larger segment of our society, from the early years of childhood, to a permanent dependence on government and a failure to assume individual responsibility, or to develop a pride in their community.

"My purpose in recommending far-reaching reorganizational proposals is to see to it that we not only continue to meet the basic needs of those who cannot do for themselves, but that we also encourage the young and able-bodied, temporarily in need of assistance through no fault of their own, to achieve the education and the skills, the motivation and the determination that will make it possible for them to become increasingly self-sufficient, independent citizens who can contribute to and share in the responsibility for their families and our society."

As to the specific legislative proposals which became chapters 101 and 102 of the Laws of 1971, the Governor's Message continues (Ex. 38, pp. 8-9):

"Work is essential to a healthy individual and a healthy society.

"Welfare should be a bridge to work for those able to work, as well as a shield against want.

"Welfare benefits should aid those who work and need supplemental help.

"But welfare benefits will not be a substitute for work.

"The welfare legislation I am submitting to your Honorable Bodies therefore:

"1. Redefines employability and limits the discretion of local social services districts to declare an individual unable to work;

"2. Requires every employable public assistance recipient to report to the State Employment Service every two weeks to pick up his assistance check instead of having it mailed by the welfare district as is presently done;

"3. Requires a bi-weekly employment counselor interview through which an employable public assistance recipient would be directed to a private job opportunity, or a training program, or a public works project;

"4. Requires every social service district to provide or contract for a public works program—including neighborhood environmental and day care center work—to which the Employment Service may assign appropriate employable recipients;

"5. Directs the Employment Service to locate and develop employment opportunities for unskilled public assistance recipients, to maintain a special job register, and to provide job preparation and follow-up services;

"6. Denies welfare to an employable individual who quits a job without good cause or refuses a job he or she is able to perform."

Thus, the welfare reform program had broad benevolent social purposes and was not a repressive measure designed solely to alleviate the State's fiscal crisis, as alleged by plaintiffs in the District Court. The bills which became chapters 101 and 102 were passed by the Legislature and sent to the Governor on April 7th. On May 13th, the State Department of Social Services issued its first Administrative Letter to local social services commissioners explaining chapter 102 (work referral program) in terms of the new statutory definition of employability and directing local social services districts to immediately review their undercare caseloads and bring information up to date in order that "each local social services district have as much time

as possible to prepare for the orderly implementation of the Law," which was to take effect on July 1, 1971 (50-53, and Ex. 5, p. 2). This Administrative Letter was followed up on June 9, 1971, with more detailed instructions on policy and procedure for the referral of unemployed employables to the Department of Labor for check delivery and receipt of employment services (53-80, and Ex. 6). Local social services commissioners were advised that the State Department of Social Services had had discussions on clearances and implementation of the law with both the State Department of Labor and the United States Social Security Administration. In this regard, the Letter states (54, and Ex. 6, pp. 1-2):

> "Obviously, it will be necessary for you to establish close working relationships with the local offices of these agencies to assure that everything possible is done to achieve an orderly work flow so that the objective of the Law to restore employable recipients to employment may be accomplished without confusion, or harassment to the recipients."

Local offices were also advised at that time of planned special meetings around the State with local commissioners and representatives of their staffs to explain and clarify policy and procedures. This Letter also further defined the statutory definition of employable, clearly explaining the meaning of the terms used in the State statute (57-58, and Ex. 6, pp. 4-5):

> "All ADC or HR applicants or recipients age 16 and over shall be deemed employable except by reason of:
>
> (a) Full-time employment;
>
> (b) Attendance at school full-time for a minor other than an emancipated minor;
>
> (c) Attendance full-time in grade or high school for an emancipated minor;

(d) Full-time, satisfactory participation in an approved program of vocational training or rehabilitation, which shall include but not be limited to participation in the Work Incentive Program and a two-year college program with a specific vocational objective;

(e) Part-time employment to the extent permitted by medical verification, or because of inability to secure adequate care for children or other incapacitated members except on a part-time basis;

(f) Mental or physical illness or incapacity which has been medically verified to be of a significant or substantial nature so as to prevent such person from engaging in employment; age shall be a basis of unemployability only when it has been verified that the individual would be potentially hazardous to himself or others with whom he is associated; and persons with a history to drug addiction shall be deemed employable only when determined medically to be free of drug use, or participating in a methadone maintenance program or rehabilitation program; or,

(g) The need of such person to provide full-time care for other members of such person's household who are verified to be wholly incapacitated or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the social services district to obtain services or the assistance of others to provide such care."

It should be noted in regard to the provisions of paragraph (g), above, that diligent efforts are required on *both* the part of the recipient and the local social services district to find day care for children and that without such efforts the person is considered unemployable.

In determining whether the mother's presence in the home is essential the local social services district is explicitly instructed to consider (60):

"(1) The nature and extent of the incapacity; what effect the mother's absence would have on the health and welfare of the incapacitated person; whether other services or the assistance of others is available, and whether such alternative plans would adversely affect the incapacitated person.

"(2) The number of children in the home, their respective ages, the existence of illness, handicap or special needs; what effect the mother's absence would have on the health and welfare of the children; whether an adequate plan of child care is available; and whether such plan of child care would adversely affect the health and welfare of children."

Thus, while the mere presence of children in a home is not to be deemed a deterrent to employment, adequate safeguards are provided in the regulations to assure that referrals of mothers or other parents for employment will not be adverse to the welfare of the children.

It should be noted that the enabling legislation, enacting the new section 350-k applying to ADC recipients, specifically provided that the public works projects must meet State and Federal requirements and that local expenditures for projects under section 350-k may be made only so long as participants remain eligible for Federal aid to dependent children (§ 350-k[6]). By letter, dated April 28, 1971, the HEW Regional Commissioner indicated that such projects would not be approved for Federal aid (Ex. 16). Consequently, section 350-k was not implemented, as provided in the state statute itself.

Title 18, New York Code of Rules and Regulations, was amended by adding a new part 385, relative to the Work Rules.

Should a public assistance recipient contest the determination that he is employable, he is entitled to a Fair

Hearing on that issue, without having to first refuse referral and be threatened with assistance termination or grant reduction (Deposition of George Demmon, pp. 92-93, Appendix, pp. 235-236; Deposition of Philip Pinsky, pp. 32-34, Appendix, pp. 226-228).

With the advent of the State's work referral program, employable recipients of public assistance in HR or ADC categories were subject to job referral under one of two programs. The Federal WIN Program, applicable only to ADC recipients, provides for job or training referral of certain categories of recipients in a limited geographic area (14 of New York's 64 social services districts). All employable HR recipients and employable ADC recipients not participating in WIN are referrable to employment under the State statutes here at issue.

Statistics as to the operation of the job referral program are most revealing as to its accomplishments. In July, 1971, the first month of operation, over 48,000 persons were referred to the State Employment Service (191). Of these, 14,035 were referred to jobs, and 1,127 to training (191). Of those referred to jobs, 1,861 were placed (191). In August, the number of persons reporting increased to 55,000 (191). Of these, 18,806 were referred to jobs and 1,316 to training (191). Of those referred to jobs, 3,405 were placed (191). The number reporting in September was again approximately 55,000 (192). Of these, 18,585 were referred to jobs and 1,201 to training (192). Of those referred to jobs, 4,110 were placed (192). Thus, excluding the first month when the program was just getting under way, the State Employment Service actually developed jobs for 20-25% of those referred to possible jobs. In November, the State Employment Service found jobs for 1,845 persons in occupational categories ranging from pro-

fessional, technical and managerial to structural work, at wage rates from under $1.85 per hour to over $4.00 per hour. It is significant that in the first four months of the program, and considering the then existent depressed state of the economy, the State Employment Service actually made job placements for approximately 9,000 persons.

A perspective on the development of the program is found in the Report of the Sub-Committee on Welfare Reform of the New York State Temporary Commission to Revise the Social Services Law, published in January, 1972 (Ex. 43). That report observes (p. 6) "in a time of slump, the fact is that jobs are being developed and placements of relief recipients are being made." Hearings were held by the Sub-Committee in late October, 1971 in Buffalo and Syracuse and mid-November, 1971 in New York City. Local social services and employment services administrators, representatives of social service staff organizations, client interest groups and public interest groups attended and testified at the hearings. The Sub-Committee's Report made six principal findings, among which are (pp. 1-2):

"1. The most illuminating impression gathered from the testimony is that a 180 degree change in attitude toward employable recipients of relief was generated by the 1971 legislation. Statutory requirements and regulations have for years been on the books to refer employable persons to the employment service, requirements which appear largely to have been relegated to perfunctory observance, if at all, by both the welfare districts and employment service operations.

"2. The screening of caseloads for identification of employables together with their being required to report to and pick up their assistance checks at employment service offices has proven salutory as a means of assessing current eligibility, resulting in some instances of reclassification of Home Relief

recipients to the Federally-aided Aid to the Disabled category, and in other instances of identifying outside employment income heretofore unknown to the local social services agency.

"3. No one or group appeared to take exception to the principle that welfare recipients who are employable should take employment when available."

The fact that the program is not static in its implementation is apparent from the further observation of the Sub-Committee (pp. 7-8):

> "Inasmuch as the work referral program was in somewhat of a shake-down phase as late as October, mutual adjustments between social services and employment service operations were still being worked out. It is interesting to note that many of the points of friction between the two systems which came out at the Buffalo and Syracuse hearings seemed to have been adjusted, or were in process of rapid adjustment by the time the Sub-Committee held their hearings several weeks later in New York City."

The Sub-Committee found some changes in the program and the statutes to be advisable and expressed its intention to sponsor appropriate legislation where statutory change was indicated. Among those changes would be the exemption of those in approved training programs from the check pick-up requirements, the exclusion of persons between the ages of 60 and 65 from the *mandatory* requirements of the statute, the assignment of the development of public work projects to the State Employment Service, arranging for full shelter allowance to be paid monthly rather than semi-monthly, and to set criteria with respect to transportation hardship. As stated previously, in this brief the exemption of trainees and shelter allowance provisions were enacted into law; the revision as to transportation hardship was accomplished by departmental regulation.

In the first year of operation of the program of work referral some 29,369 public assistance recipients were provided work experience, and an average of 50,000 persons each month were receiving manpower and referral services from the State Employment Service. It should be noted that the evidence in the record in this case, resulting from depositions taken of personnel of the State and local social services departments and of the State Department of Labor, shows that the program of work referral has been so administered that persons eligible for WIN referral are invariably referred to WIN, that only those persons not eligible for WIN referral, or for whom no place exists in the WIN program, are referred for employment pursuant to the State statute (226, 234-235, 239, 252-253).

The contrasting extent of the two programs is demonstrated from a comparison of statistics. In fiscal 1971, the Department of Social Services referred 17,511 individuals for participation in the WIN program. However, in fiscal 1971, the Federal Government allowed only 9,600 opportunities for enrollment in the WIN Program for New York State. On the other hand, between November, 1971 and June, 1972, there were approximately 125,000 referrals, within the scope of seven months, under the State work referral program.

The WIN Program is restrictive geographically in the sense that it exists in only 12 of the State's 64 social services districts. The actual designation of the number of districts within which the program operates is made by the Federal Secretary of Labor. It is estimated that during 1971-72, the WIN Program was able to provide services to 30,000 clients; *i.e.*, 15,000 at any one time with a 100% annual turnover. Under the revised WIN program, effective July 1, 1972, it was initially estimated that there would be 75,000 registered ADC recipients who would be poten-

tial WIN participants. The program, as originally funded by the Federal Government, would not have the capacity to accommodate more than a fraction of this number. Since the inception of the revised WIN Program, the Federal-State contract has twice been revised to increase the funding and thus the number of persons who may be serviced under the WIN Program. The program is still limited, however, to only 14 social services districts and, according to State estimates, to no more than 63,000 persons. The WIN Program's extent and inclusiveness, however, are determined not by the Federal statute but by available funding and by the discretion of the Federal Secretary of Labor.

In January to June, 1972, there were 2,657 job placements under the WIN Program, operating in districts accounting for 90% of all ADC recipients, while under section 131(4) some 5,323 persons were placed in jobs statewide.

B. The District Court Decision

The District Court, in its decision, rejected plaintiffs' contentions that the statutes violate the Thirteenth and Fourteenth Amendments to the Constitution of the United States. As to the contention regarding the Thirteenth Amendment, the Court observed: "Requiring employable persons on public assistance to engage in employment, if available, in the absence of circumstances different from those presented in this case, is entirely proper."

As to the contentions as to the Fourteenth Amendment, the District Court stated:

> "A statutory classification in the area of social welfare, however, is consistent with the Equal Protection Clause if it is 'rationally based and free from invidious discrimination,' see *Dandridge* v. *Williams*, 397 U. S. 471 (1970). The Work Rules reflect a judgment by

> the state's Executive and Legislature that a drastic revision of the state's welfare program was in order. This court cannot say that the Rules are without a rational basis under the circumstances."

As to the Due Process Clause violation arguments, the Court found no denial of due process, although it did find that recipients needed to be advised of their rights to fair hearings and the Court directed that suitable means of notifying HR (Home Relief) recipients of their right to fair hearings on the issue of employability be implemented within thirty days after filing of the decision.

Although upholding the statutes as against claims of unconstitutionality under the Thirteenth and Fourteenth Amendments, the Court did hold the State statutes to be in conflict with the Federal Social Security Act, specifically the WIN Program, and thus to be in violation of the Supremacy Clause of Article VI of the Constitution of the United States.

In so doing, the Court relied primarily upon a decision of the United States District Court for the Eastern District of Virginia (*Woolfolk* v. *Brown,* 325 F. Supp. 1162 [1971], affd. 456 F. 2d 652 [4th Cir., 1972], cert. den. ____ U. S. ____ [Oct. 10, 1972]), for although the Court also cited an Oregon case (*Bueno* v. *Juras,* 349 F. Supp. 91 [1972]), the Oregon Court had relied solely upon the *Woolfolk* case for its decision. The *Woolfolk* case, however, involved specific questions as to the specific individuals residing in an area where the WIN Program was in operation and who had not been found to be inappropriate for WIN referral prior to their referral for employment under the State program. The instant case, however, involves a class of plaintiffs some of whom reside in social services districts in which WIN is not in operation and a fact situation wherein the administrators of the program concede that WIN referral takes precedence over the State program.

Summary of Argument

It is the position of the State of New York that the WIN Program, as enacted by Congress and as administered by the United States Department of Labor, was not intended to be the sole and exclusive method by which public assistance recipients could be referred for employment. The State agrees that those recipients who are eligible for WIN referral must be referred to WIN and that, where there is space available for them in the WIN Program, they must be processed through that program for job referral. It is also the State's position that while the Federal Social Security Act does not prohibit a complementary State program under which recipients residing in non-WIN districts or for whom space is not available in the WIN Program or who are ineligible for WIN referral, although still factually employable, may be referred to employment or placed in public service employment pending job placement in the regular economy.

Since the WIN Program from its inception in New York State has been less than statewide in operation, as determined by the United States Secretary of Labor, and has provided by the terms of the contracts between the United States Department of Labor and the State of New York for the funding necessary to service only a fraction of the employable recipients of public assistance, and since the number of persons serviced under the Federal Act is not determined by the Federal Social Security Act but rather by administrative determinations and availability of funds, the Federal Act was not intended to be and is not the exclusive procedure for job referrals of public assistance recipients. Furthermore, where Congress has devised a method for referring public assistance recipients to employment and has, by the Talmadge Amendments in 1972 (P. L.

223), increased the emphasis on job replacement, and yet not made the program all inclusive, Congress could not have intended to defeat its ultimate objective of economic self-sufficiency of welfare recipients by depriving the States of the power to provide for complementary legislation covering those persons and areas not included in the Federal Act or funding.

ARGUMENT

The Federal Social Security Act was not intended nor does it operate to pre-empt the entire field of welfare legislation. It establishes only minimum standards and New York's Work Rules are within the area of discretion remaining to the States under the Social Security Act.

A.

Initially, it must be observed that insofar as the Work Rules apply to recipients of Home Relief, a non-federally aided category of assistance, the supremacy argument has no bearing. Since the Social Security Act in no way regulates state programs under that category of assistance, there can be no pre-emption of state power in regard to the Home Relief program. Thus, the issues on this appeal are addressed solely to recipients in the ADC and ADC-U categories.

Appellees contended below that the Work Rules constitute an additional condition of eligibility for assistance and thus are invalid and in conflict with the Federal Social Security Act.

However, State statutes and regulations providing for work referral and penalizing recipients for refusal to accept employment are not in conflict with the Federal Social

Security Act. One of the basic purposes of the Federal Act is to help parents or relatives of dependent children "to attain or retain capability for the maximum self-support and personal independence" (42 U. S. C. A. § 601). Additionally, the Federal Act specifically authorizes the States to disregard, in determining family need, the needs of any person who in the preceding thirty days or more has either deliberately reduced earning capacity, quit a job or refused to accept employment offered through the State Employment Service (42 U. S. C. A. § 602 [a(8)]). The New York Work Rules do no more than implement the intent of those sections by providing for the referral of employable public assistance recipients to employment. They add no new conditions of eligibility not already contemplated by the Federal Act.

Appellees also contended in the District Court that the New York Work Rules are invalid because they provide for personal delivery of checks, rather than delivery by mail. They contended that this conflicts with the intent of the Federal law, citing guidelines which are directed toward a potential that personal delivery might be conditioned on payments to other persons, rather than securing to the welfare recipients the full benefit of the checks (HEW Handbook of Pub. Assist. Admin., Part IV, §§ 5253.2, 5254). There is, however, no question but that under the New York Rules welfare recipients are entitled to the unconditional delivery of their checks, that that delivery is not even conditioned on compliance with the Work Rules. The testimony in the depositions is clear that a recipient is entitled to receive his check even if he refuses manpower services from the State Employment Service. There is thus no potential under the New York Work Rules for conditional delivery of checks.

Appellees also contended that the New York statutes violate the requirements of the Federal Act that a single state agency administer the state plan for public assistance. The Federal law requires that the state agency either singly administer, or singly supervise the administration of the state's plan for public assistance. New York's plan provides for state supervision, not administration. In any event, the testimony in the record is clear that the State Employment Service acts under the directives of the State and local social services departments and that all ultimate decisions are made by the social services agency. The witnesses made it very clear in their depositions that determinations of employability are made only by the local social services department, that determinations of non-compliance and eligibility are made only by the local social services agency and that all utlimate responsibility for the administration of the work referral program, and all administration of the public works project program, lies in the social services agencies.

The intent of the Federal Act was to prevent the intrusion into the ultimate decision-making process of non-social services agencies, and in part, at least, to prevent Federal funds from being diverted to non-social services agencies, a problem not present under the statutes at issue here.

Even more to the point, however, is the fact that the Federal law itself contemplates the participation of state employment services. These agencies are the agencies which administer the WIN Program under the Federal statute; and the Federal law authorizes denial of assistance to persons who have refused jobs to which they have been referred by state employment services. It is also apparent from the debate on the 1971 amendments to the

Federal Act (The Talmadge Amendments) that Congress is itself very much concerned with the development of methods which will increase coordination between social services departments and state employment services in work referral programs (Congressional Record, December 14, 1971, p. S21641).

B.

The primary contention of the appellees has been simply that the Federal Social Security Act was intended to pre-empt the entire field of welfare legislation and work referral and that New York's statute and regulations unconstitutionally conflict with the Federal Act. In this regard, it must be understood that a constitutional conflict does not automatically result from State and Federal legislation in the same fields. Pre-emption requires much more than this.

Thus, in *Huron Portland Cement Co.* v. *City of Detroit* (362 U. S. 440 [1959]), it was held that a Detroit ordinance designed for the elimination of air pollution was valid despite Federal inspection laws which prescribed the method of construction of boilers to be used on sea-going vessels. This Court there said (p. 446):

> "We conclude that there is no overlap between the scope of the federal ship inspection laws and that of the municipal ordinance here involved. For this reason we cannot find that the federal inspection legislation has pre-empted local action. To hold otherwise would be to ignore the teaching of this Court's decisions which enjoin seeking out conflicts between state and federal regulations where none clearly exists. *Savage* v. *Jones*, 225 U. S. 501; *Welch Co.* v. *New Hampshire*, 306 U. S. 79; *Maurer* v. *Hamilton*, 309 U. S. 598."

"It is well settled" as the First Circuit Court of Appeals said in *Chrysler Corp.* v. *Rhodes* (416 F. 2d 319 [1969]), that "where the State's police power is concerned pre-emption will not be presumed" (*Engineer* v. *Chicago R. I. & R. R. Co.*, 382 U. S. 423 [1966]).

The rule as to whether a Federal law has pre-empted the right to regulate from the State is that *the intention to supersede the State's police powers must be clearly evidenced by the Federal legislation.* The intention to regulate exclusively will not be implied unless the Federal and State laws are inconsistent (*New Mexico Board of Examiners* v. *Roberts*, 70 N. M. 90, 370 p. 2d 811 [1962]). No intention to supersede the State's right to legislate in this area of public welfare has been shown. No inconsistencies between the New York Work Rules and Federal Law or regulations have been shown. (It must be remembered that the testimony in the depositions clearly shows that where WIN projects are in existence, persons appropriate for WIN will be referred there rather than to employment under the Work Rules.)

The requirement that a Congressional intent to pre-empt a field of legislative concern must be clearly and unequivocally demonstrated was forcefully stated by this Court in *Schwartz* v. *Texas* (344 U. S. 199, 202-203 [1952]):

> "If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed.
>
> "'The principle thus applicable has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that the intention to supersede the exercise by the State of its

authority as to matters not covered by the federal legislation is not to be implied unless the Act of Congress fairly interpreted is in conflict with the law of the State.' *Atchison, T. & S. F. R. Co.* v. *Railroad Commission*, 283 U. S. 380, 392-393. See *Savage* v. *Jones*, 225 U. S. 501, 533.

"'It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested.' *Reid* v. *Colorado*, 187 U. S. 137, 148."

In that case, this Court held that the Federal Communications Act, which made the disclosure of information secured by wiretaps a Federal crime, did not prevent the use of wiretap testimony in State court proceedings, even when in Federal courts such information was not considered admissible. When, eventually, wiretap evidence was held to be generally inadmissible in State court proceedings, that was done not by holding that the Federal law pre-empted State law, but rather under provisions of the Constitution other than the Supremacy Clause.

In *Florida Lime & Avocado Growers, Inc.* v. *Paul* (373 U. S. 132 [1963]). this Court held the test of pre-emption to be: Does the State regulation impair the Federal superintendence of the field? If there is no collision between the Federal and the State regulation, the Court said (p. 143):

"Thus the present record demonstrates no inevitable collision between the two schemes of regulation, despite the similarity of the standards.

"The issue under the head of the Supremacy Clause is narrowed then to this: Does either the nature of the subject matter, namely the maturity of avocados, or any explicit declaration of congressional design to displace state regulation, requires § 792 to yield to the federal marketing orders?"

This Court there stated as a further test of pre-emption (p. 141):

> "Whether a State may constitutionally reject commodities which a federal authority has certified to be marketable depends upon whether the state regulation 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,' *Hines* v. *Davidowitz*, 312 U. S. 52, 67. By that test, we hold that § 792 is not such an obstacle; there is neither such actual conflict between the two schemes of regulation that both cannot stand in the same area, nor evidence of a congressional design to pre-empt the field."

And additionally (p. 142):

> "The test of whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives."

In the instant case, while both the State and Federal laws are aimed at similar objectives: restoring employables to independence and self-sufficiency, the evidence shows that they operate in compatible areas, that referrals to the WIN program take precedence, where applicable, over referrals under either section 131(4) or section 350(k) (public work projects), that the criteria by which employability is determined are substantially the same under both the State and Federal laws, that there is, in fact, no irreconcilable conflict between the two areas of operation, and that the State Law does not stand as an obstacle to the accomplishment of the objectives of Congress.

Having found no irreconcilable conflict between the State and Federal regulations, this Court in the *Florida* case *supra*, stated one further consideration under the Supremacy Clause (p. 146):

"Since no irreconcilable conflict with the federal regulation requires a conclusion that § 792 was displaced, we turn to the question whether Congress has nevertheless ordained that the state regulation shall yield. The settled mandate governing this inquiry, in deference to the fact that a state regulation of this kind is an exercise of the 'historic police powers of the states,' is not to decree such a federal displacement 'unless that was the clear and manifest purpose of Congress,' *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230."

(See, also, *Joseph E. Seagram & Sons, Inc.* v. *Hostetter*, 384 U. S. 35, 45-46 [1966].)

In *Cloverleaf Co.* v. *Patterson* (315 U. S. 148 [1941]), this Court stated (pp. 155-156):

"• • • It has been long recognized that, in those fields of commerce where national uniformity is not essential, either the state or federal government may act. *Willson* v. *Black-bird Creek Marsh Co.*, 2 Pet. 245; *California* v. *Thompson*, 313 U. S. 109, 114. Where this power to legislate exists, it oftens happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation. But when the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its operation.

"When the prohibition of state action is not specific but inferable from the scope and purpose of the federal legislation, it must be clear that the federal provisions are inconsistent with those of the state to justify the thwarting of state regulation." (Emphasis supplied.)

The Federal Social Security Act does not specifically preempt the field of social welfare legislation by prohibiting state legislation in the field; it has indeed been described as creating an area of "cooperative federalism". In fact, the

Act establishes only minimum federal requirements for State plans of assistance to certain specific categories of persons in need of assistance. That it does not cover the entire field of welfare is apparent from the fact that there are categories of aid which are totally State supported (such as Home Relief) because the Congress did not see fit to legislate at all as to the persons provided for therein. More importantly, this is not the first case in which the issue of pre-emption has been raised in regard to the Federal Social Security Act and State statutes or regulation. Both the Federal and the State courts have considered the issue of pre-emption in the past, with almost uniform results.

In *Snell* v. *Wyman* (281 F. Supp. 853 [S. D. N. Y., 1968], affd. 393 U. S. 223), the Court considered a New York statute which provides for recovery of previously paid welfare benefits from assets of recipients, such as equity in real estate, bank accounts, proceeds of lawsuits or insurance policies, etc. The District Court there held that the Federal Social Security Act did not prohibit such legislation, either directly or by implication, and that the State statute was not rendered invalid simply because it did not accord with the social philosophy of either the plaintiff or the Court (281 F. Supp., at p. 863).

Less than two years ago this Court specifically held that the Federal Act did not pre-empt the field of welfare legislation, *even in areas covered by the Federal Act itself* (*Dandridge* v. *Williams, supra*). In that case, holding valid a Maryland statute which set a maximum limit on the number of children in a family for which ADC would be paid, this Court held as to the power of the States to legislate (397 U. S., p. 478):

> "In *King* v. *Smith, supra* (392 U. S. 309), we stressed the States' 'undisputed power,' under these provisions of the Social Security Act, 'to set the level of benefits and the standard of need.' *Id.*, at 334. We described the AFDC enterprise as 'a scheme of cooperative federalism,' *id.*, at 316, and noted carefully that '(t)here is not question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.' *Id.*, at 318-319. * * * Thus the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds."

In a case particularly appropriate here, the Supreme Court of Wisconsin held that the WIN program does not prevent other work requirements (*Stacy* v. *Ashland County Dept. of Public Welfare*, 159 N. W. 2d 630 [1968]). In that case the local welfare agency required a mother to accept employment; she was offered part-time work, nursing care for her mother and baby-sitters for her children when needed. The recipent claimed that since she could not be required to participate in the WIN Program, she could not be required to work under the State plan. Court rejected the argument stating (p. 636):

> "While a welfare agency has the right to spend public funds to promote the welfare program, it also has the responsibility not to spend taxpayers' funds beyond the limits of those purposes. Those who do not qualify should be denied benefits."

An Illinois statute provides for deductions from welfare checks for previously furnished emergency assistance. The United States District Court for the Northern District of Illinois held that the Federal Act does not prohibit such deductions, even though the law does prohibit deductions for prior overpayments or loans (*Acosta* v. *Swank*, 312 F. Supp. 765 [1970]).

In *Ramos* v. *Montgomery* (313 F. Supp. 1179 [S. D. Calif., 1970]), the Court found that the Federal Act's intent to maintain the family structure did not prevent State legislation which provided higher payments for children in foster homes than in their natural homes.

Only the *Woolfolk* case, relied upon by the plaintiffs and the District Court in this action, has held a State work requirement to be in general conflict wth the Federal Act (*Woolfolk* v. *Brown*, 325 F. Supp. 1162 [E. D. Va., 1971], affd. 456 F. 2d 652, cert. den. ____ U. S. ____ [Oct. 10, 1972]). Even in that case, the District Court specifically stated (p. 1170):

> "The Court is not ruling that persons receiving assistance are without obligation to accept employment."

In that case, however, the Court found that Virginia's rule sought to put recipients in employment in "an imprecise and summary fashion" (p. 1170). The Court also found that the Virginia rule was not meant to apply to those found to be appropriate for WIN or who volunteered and were referred to WIN, a fact which is also true of the New York rules. However, in *Woolfolk*, the Court found that the individual plaintiffs had not been found to be in appropriate for WIN referral and that therefore *the state rule was improperly applied to those plaintiffs*. In the instant case, despite the fact that appellees here have the same attorneys as did the plaintiffs in *Woolfolk*, there were no allegations in the complaint as to the ADC recipients referred to the State Employment Service as to whether any of them had been determined to be appropriate or inappropriate for WIN referral. Although the Court in *Woolfolk* limited its finding of invalidity of the state rule only to those areas in which the WIN program is in effect, we sub-

mit that the Court's further finding, that employment cannot be compelled where recipients are deemed inappropriate for WIN referral due to remoteness from a WIN project, was also in error. The Federal guidelines for WIN provide for the establishment of WIN projects only in areas where there are 1100 or more potential WIN referees. Thus, areas with less than 1100 employable public assistance recipients would most probably not have such a project established and the recipients in that area would be deemed inappropriate for WIN referral because of remoteness from a project. To hold that such persons could not be referred to available employment, solely because they are inappropriate for WIN because of remoteness, is contrary to the express purpose of the Federal Act to attain individual self-sufficiency and independence and to assist welfare recipients in moving from welfare rolls to payrolls. In view of the rejection by the District Court in *Woolfolk* of the theory that persons receiving assistance are without obligation to accept employment, its further findings concerning persons not appropriate for WIN referral are totally inconsistent. It is submitted that, at least in that respect, the *Woolfolk* Court was in error.

Not only do the Federal acts and the New York State statutes not conflict, they are in fact compatible in purpose and intent. This is apparent from an examination of both programs.

The Federal Social Security Act provides that appropriations under the ADC program are made, in part, for the purpose of helping parents and relatives of needy dependent children to "attain or retain capability for the maximum self-support and personal independence" (42 U. S. C. A. § 601). The Federal Act, under the WIN Program, provides for non-referral to that program of persons

who are ill, incapacitated, of advanced age, a child in full time school attendance, a person whose presence is required in the home to care for persons who are ill or incapacitated, or a person who is so remote from a WIN project as not to be able to effectively participate. (It should be noted that the language of the Federal Act as to appropriateness for referral is similar to the employability definition of Social Services Law, § 131[4].)

In the Congressional presentation of the Social Security Act amendments which became Public Law 92-223, Senator Long made some significant observations on the purpose of the work referral program under the Federal Act (Congressional Record, December 14, 1971, p. S21641):

> "One final word on this amendment. As the Senate knows, we will be legislating next year on extensive changes in the welfare system. I have views of my own, as I am sure other Senators do, about what we might do to improve the welfare programs; but in the meantime, I am pleased to see the Congress take this forward step in improving the work incentive program under existing law so that it can be more effective in enabling welfare recipients to become employed. As we know from a number of studies that have been conducted by the Department of Health, Education, and Welfare, most adults in families receiving welfare would prefer to work rather than remain on welfare. It is my hope that the amendments contained in the conference report will help these recipients in their efforts to become independent—efforts that are all too often frustrated today by the welfare system that is supposed to be helping them."

The guidelines issued by the United States Department of Health, Education, and Welfare for the Work Incentive program clearly express the purpose of that program to be one of work referral (Ex 45, § 31):

"The purpose of the Work Incentive Program is to provide an opportunity for certain members of AFDC families, 16 and over, to be placed in paid employment immediately or to secure the necessary services to prepare them to get and hold jobs in order to become self-supporting or capable of supporting their families.

"Added to the obvious desirability of an adequate income is the recognition that employment is a necessary and healthy part of family living. Many of the persons served in this program have a sense of isolation from the mainstream of American life. By entering the world of work successfully, such individuals may see themselves in a new light in relation to their own sense of worth and their standing in the community. The family head who gains this new respect for himself cannot help but imbue his family with it and set a pattern for a new outlook and independent living."

In the District Court, appellees placed great emphasis on the hardships encountered by a few participants in the work referral program, but glossed over the fact that the individuals involved in these so-called hardship cases apparently numbered no more than 60 out of the more than monthly average of 50,000 persons involved in the referral program.

The accomplishments of the program, on the other hand, are demonstrated by the New York State Temporary State Commission to Revise the Social Services Law in its Report of January, 1972 (Ex. 43), which states (p. 4):

> "The salutary effect of the work referral program on welfare administration was universally testified to from one end of the State to the other."

And again (p. 6):

> "And, in a time of slump, the fact is that jobs are being developed and placements of relief recipients are being made."

The accomplishments of the New York work referral program were aptly set forth in remarks of Commissioner Wyman, one of the defendants here, at the Midwinter meeting of the New York Public Welfare Association in Rochester, New York, on January 20, 1972 (Ex. 44). At that meeting, the Commissioner reviewed the results of the program in the first five months of operation, stating:

> "Public welfare in 1971 became, to a substantial degree, a work-oriented program designed to move as many employable people as possible from welfare rolls to payrolls through work incentive payments, work training, work tests, work relief, and other means. And there has been noticeable progress toward achievement of these goals.
>
> "A preliminary analysis of the first five months show that the Governor's reform program has had a substantial impact on the situation of the employable welfare recipient.
>
> "There is no doubt that this first data indicates that the reform program was both necessary and has been effective.
>
> "In the first five months of the reform program's requirement that employable recipients report to the State Employment Service offices for job counseling and manpower services, 13,462 have been placed in jobs, an important first step in giving them a feeling of self-worth and a means to self-sufficiency. All of these job placements were not of long-term duration, but they were—most importantly—a work experience; a relationship with responsibility, and a chance to prove oneself. For many, it did, however, open the door to permanent employment and put an end to their reliance on public assistance."

The basic philosophy of the work referral program was also clearly stated by the Commissioner in those remarks when he stated:

"Some people talk of work as a demeaning demand, a beyond-reason expectation that detracts and denies the individual the meaning of freedom and the exercise of choice. But work is not an obligation that makes less of a man, but rather it makes more of a man. When a man loses a job, he loses more than money. Work is more than a provision of income—although too many people interpret the work requirement as a cold and callous insistence that everyone must 'work or starve.'

"But work is more than doing a job, putting in time and collecting pay. Work is a source of interest, of friendship, and of activity that gives meaning and fulfillment to life. A graver consequence of loss of job, beyond the curtailment or elimination of income, is that an individual is likely to lose confidence in himself. People ask him what he is doing and where he works. He is reluctant to say he is not working because this might seem to be an admission that he is less effective than other people. His sense of his own prestige is diminished.

"So when work is made a requirement, it is not done in a punitive sense, because there is a personal need for being needed, of having personal worth, of having personal capabilities and talents which are utilized and made productive. Measured in these unchallengeable terms, the work requirement becomes even more important and more necessary to the individual, in addition to the entire system."

Contrary to appellees' assertions in the District Court, the work referral program is compatible with the intent of the Federal Act. It has both a beneficial purpose and effect, and has accomplished much of value to the welfare recipients in the few months that it has been in operation. New York's program in no way so conflicts with the Federal Act that it is rendered invalid under the Supremacy Clause.

C.

Both the plaintiffs in the District Court and the Court itself placed considerable emphasis on the differences in procedures under the WIN Program and under the State's Work Rules, contending that these differences were significant on the issue of incompatibility of the State and Federal statutes. Where, however, as here, the Federal and State programs involve different people (recipients referred under the State program are not the same people as those participating in WIN), the differences in procedure are not material to the issue of pre-emption. The issue really is whether the Federal program was intended to be all inclusive and to pre-empt State programs of work referral of public assistance recipients.

Certainly Congress knew that under 42 U. S. C. § 632(a), the Secretary of Labor would establish WIN Programs only in those state political subdivisions in which the Secretary determined "there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children" and that "in other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established." The WIN guidelines, issued by the United States Department of Labor, provide for the establishment of WIN Programs only in those areas where there are at least 1100 potential WIN referees, thus eliminating many relatively lightly populated areas of states and many, cumulatively, potential job placements. In New York State, the WIN Program has been established by the Secretary of Labor in only 14 of New York State's social services districts. WIN is not available and can-

not be made available to recipients in the majority of the social services districts because the Secretary refused to authorize additional WIN Programs in the other districts, and adequate transportation does not exist for potential enrollees in these districts. Thus many public assistance recipients are denied the benefits of the Federal job placement program.

In terms of sheer numbers, the inadequacy of the WIN Program as a comprehensive program of job placement of welfare recipients becomes clearly apparent. In fiscal 1971, 17,511 individuals were referred for participation in the WIN Program, but the Federal government allowed only 9,600 opportunities for enrollment. In the same fiscal year (in only 7 months of that year) 125,000 referrals were made under New York State's work referral program. Those numbers alone indicate that the Federal program was not intended to be pre-emptive. The Federal program is limited to only a fraction of the State's welfare districts. While those districts included in the WIN Program do service approximately 90% of the welfare recipients in the State, a program cannot be said to pre-empt the field of job referral when it leaves out even a fraction of potential referees, either geographically or by limitation of funding. More people have been placed in jobs under the State's work referral program than under WIN and, even though after the decision of this case in the District Court the State and the Federal Department of Labor entered into a modification of the existing WIN contract to substantially increase the number of persons serviced under the WIN Program, it still is not all inclusive either in terms of numbers of people covered by the contract nor in geographical area covered; the same welfare districts are still excluded from the WIN Program as were before the modification.

The limitations and discretion in the Federal statute as to the extent of the WIN Program clearly demonstrate a Congressional intent that the act not pre-empt the power of the states to adopt complementary legislation providing programs servicing those social services recipients not eligible for WIN referral or for whom there is no room in the program, either by reason of limitations of geography, space availability, or funding.

For these reasons, we submit, the provisions of the Federal Social Security Act establishing the WIN Program do not exclude the states from developing their own complementary programs of work referral for public assistance recipients. The Court below, therefore, erred in holding that Chapters 101 and 102 of the New York Laws of 1971 are unconstitutional as being in violation of the Supremacy Clause of Article VI of the Constitution of the United States.

CONCLUSION

The judgment below should be reversed and judgment should be directed holding Chapters 101 and 102 of the New York Laws of 1971 to be constitutional and valid.

Dated: February 20, 1973.

Respectfully submitted,

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APPENDIX

New York Law of 1971, Chapter 101

New York Law of 1971, Chapter 101 provides:

"Section 1. Section one hundred sixty-four of the social services law, such section having been added by chapter seven hundred fourteen of the laws of nineteen hundred fifty-nine, paragraph a of subdivision two thereof having been last amended by chapter six hundred seventy-three of the laws of nineteen hundred sixty-two, is hereby amended to read as follows:

"§ 164. Work relief. 1. As hereinafter provided, employable persons receiving home relief shall be required to perform such work as shall be assigned to them by the social services official furnishing such home relief or by the state industrial commissioner as hereinafter provided.

"2. (a) The social services official of a county, city or town which is responsible for providing home relief shall provide for the establishment of public work projects for the assignment of employable persons in receipt of home relief to perform work for such county, city or town or for the state, and the head of any department, bureau, division or other unit thereof may request that such persons be assigned to his unit. In providing for the establishment of such public work projects, such social services official may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section. In the case of a county social services district which is reponsible for providing home relief within towns or cities within the county, persons may be assigned to work for the state or any city, town, or village in the county and the head of any department, bureau, division or other unit of the state or any such city, town or village may request such assignment. In

the case of a town which is responsible for providing home relief within a town, persons may be assigned to work for any village in the town and the head of any department, bureau, division or other unit of any such village may request such assignment. The request shall be addressed to the social services official or to the state industrial commissioner, in appropriate instances, and shall indicate the number of persons who can be used and the character of the work to be performed.

"(b) The social services official or the state industrial commissioner shall thereupon assign such persons in receipt of home relief who, in his judgment, are able to perform the work indicated, provided he is satisfied that such persons will not be used to replace, or to perform any work ordinarily and actually performed by, regular employees of any department or other unit of such county, city or town, or to replace, or to perform any work which would ordinarily be performed by, craft or trade in private employment.

"3. (a) Persons shall be assigned to perform only such work as they are able, in the judgment of the social services official or the state industrial commissioner, to perform.

"(b) The number of days of work to be given each person shall be determined by the amount of the budget deficit of the recipient and his family computed on local home relief budget schedules. No person shall be required to work for more than the number of days necessary to earn such amount or to be paid more than such amount. No person shall be required to work more than eight hours in a day or more than forty hours in a week.

"4. Any person who refuses to report for or to perform work to which he has been assigned by the social services official or the state industrial commissioner shall thereupon become ineligible for home relief.

"§ 2. Such law is hereby amended by adding thereto a new section, to be section three hundred fifty-k, to read as follows:

"§ 350-k. Public works projects. 1. Public works projects meeting state and federal requirements shall be established, or the establishment thereof shall be provided for, by every social services district for the conservation of work skills and/or the development of new skills of parents and other eligible relatives receiving aid to dependent children from such district.

"2. In providing for the establishment of such projects, the district may contract with the state industrial commissioner for the establishment and implementation of such projects, for the assignment to them of persons registered under subdivision four of section one hundred thirty-one of this chapter, and for such other matters deemed necessary, desirable or convenient for the effective administration of this section.

"3. A parent, or other eligible relative whose maintenance is included in the grant and allowances, may be assigned to participate in such a public work project, only if: (a) appropriate standards of health, safety and other work conditions are maintained;

"(b) the number of days work to be given each person shall be determined in the case of a parent, by the amount of the grant or allowance, and in the case of such other eligible relative, by the amount included in the grant or allowance for his maintenance, provided that no person shall be required to work for more than the number of days necessary to earn such amount or to be paid more than such amount, or to work more than eight hours in a day or more than forty hours in a week.

"(c) such assignment would not result in the displacement of regular workers or in the performance by such parent or relative of work that is being performed by employees of public or private agencies, institutions or organizations;

"(d) provisions are made to extend coverage to such parent or relative under the workmen's compensation law;

"(e) such person is deemed employable under the provisions of subdivision four of section one hundred thirty-one of this chapter;

"(f) provisions are made to permit such parent or relative to seek regular employment and/or to secure appropriate training or re-training opportunities which may be available.

"4. A parent or other eligible relative required to participate in a public work project who fails to participate in such project, without good cause, as defined by regulation of the department, shall thereupon become ineligible for aid to dependent children.

"5. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not bring an action or proceeding against any person, to recover for payments correctly made to a parent or other eligible relative on account of his participation in a public work project.

"6. (a) Expenditures may be made by a social services district on behalf of a parent or other eligible relative participating in a public work project, only so long as federal aid for aid to dependent children shall be extended to such expenditures.

"(b) Such expenditures shall be eligible for state reimbursement in accordance with the provisions of section one hundred fifty-three of this chapter.

"§ 3. Section eight hundred twenty-one of the labor law, as amended by chapter one hundred twenty-eight of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

"§ 821. State training courses. The commissioner may provide for vocational and related, institutional and on-the-job training courses as described in section

five hundred ninety-nine of this chapter and for the administration of public works projects for recipients of public assistance, and may contract for these purposes with public and private agencies including public and private institutions of learning, employers or other appropriate organizations. He shall select for and refer to such training courses unemployed and underemployed persons who would meet the conditions for approval as specified in section five hundred ninety-nine of this chapter. He shall select and refer to public work projects all public assistance recipients registered at employment offices of the department who are neither referred thereby for employment in the regular economy or for occupational training, nor assigned to public works projects by public welfare officials. The commissioner may provide for such payments, either in advance or by way of reimbursement, from funds made available to carry out the purposes of this article, as he deems necessary.

"§ 4. This act shall take effect July first, nineteen hundred seventy-one."

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The New York work rules violate section 402(a)(10) since they exclude from the AFDC program individuals who meet all federal requirements for the receipt of AFDC 9

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

Nos. 72-792, 72-802

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, *et al.*,

Appellants,

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES, *et al.*,

Intervenors-Appellants,

—against—

DOLORES DUBLINO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

RIEF *AMICI CURIAE* OF THE NATIONAL WELFARE RIGHTS ORGANIZATION, CITYWIDE COORDINATING COMMITTEE OF WELFARE ORGANIZATIONS AND THE UPSTATE WELFARE RIGHTS ORGANIZATION

Interest of *Amici Curiae*

Amici file this brief pursuant to Rule 42(2) of the Rules the Supreme Court. Written consent of the parties been filed with the Clerk of the Court.

Amici are membership organizations composed of recipients of public assistance across the country and in New York State. National Welfare Rights Organization (NWRO) is a national voluntary association of welfare recipients. It was formed in 1967 by recipients of public assistance to enable them to learn of their rights and entitlements and to organize and teach individuals in need of financial assistance how to secure public assistance benefits. The membership of NWRO includes more than 125,000 members in 50 states. Since many of its members have been, and continue to be, adversely affected by regulations which deny welfare benefits to families in violation of the requirements of the Social Security Act, the Organization has devoted much of its energies and resources to the abolition of such arbitrary rules. Members of NWRO have appeared as individual plaintiffs before this Court on many occasions; the Organization also submitted briefs *amicus curiae* in *Lewis* v. *Martin*, 397 U.S. 552 (1970), and *Dandridge* v. *Williams*, 397 U.S. 471 (1970).

City Wide Coordinating Committee of Welfare Organizations (Citywide) was formed in 1966 by welfare recipients for the purpose of assisting all needy individuals to receive the grants to which they are legally entitled. Citywide is the coordinating agency for neighborhood welfare organizations in New York City and it has over 10,000 members who are also members of NWRO. Upstate Welfare Rights Organization (Upstate) is an amalgam of local groups spread over New York State from Westchester County north to the Canadian border and west to Lake Erie. It was established in 1968 and includes 66 local groups covering 75% of the geographical area of the state. Through this organization, local groups coordinate their activities and

share information as to the policies and practices of the welfare agencies and the rights of applicants and recipients. Members of Upstate are also members of NWRO.

Amici, and Upstate and Citywide in particular, have specific knowledge of the operation of the New York Work Rules through the experiences of their members who have been required to participate in the program. This experience, together with their intimate knowledge of the welfare program in the state, leads them to challenge the frequent assertions that the program was designed for a benevolent purpose, and that the framers or administrators of the program either intended or believe that it will aid families on assistance to achieve independence through the attainment of sustained paid employment which will remove their need for further assistance. Accordingly, *amici* wish to inform this Court, as they did the Court below, as to why they believe the work rules are illegal. Although two separate questions have been raised on this appeal, *amici* will address themselves in this brief only to one of them.

The first question is whether New York's work rules, and in particular N. Y. Soc. Serv. L. §131.4, contravene the federal requirement in §402(a)(10) of the Social Security Act, 42 U.S.C. §602(a)(10), that AFDC be furnished to all eligible individuals insofar as they operate to exclude from the AFDC program those individuals who refuse to comply with such rules. If so, they are invalid under the Supremacy Clause as long as New York continues to participate in the AFDC program. The second question is whether New York's work rules must fall under the Supremacy Clause because they attempt to cover an area of regulation, work requirements for AFDC recipients, which has been pre-

empted by federal legislation, namely the comprehensive Work Incentive Program established in Part C of Title IV of the Social Security Act, 42 U.S.C. §630 *et seq.*, and which is administered by the U.S. Department of Labor. Appellees are entitled to prevail if either question is answered in the affirmative. While we fully endorse appellees' position as to the preemption issue, and believe the Court would be entirely justified in affirming the decision below on that ground, we have decided to address ourselves only to the issue raised under §402(a)(10) because of two considerations.

First, §402(a)(10) is the most fundamental requirement of the AFDC program, and expresses a basic premise in the congressional grant-in-aid structure, namely that "available funds should be used for the benefit of all persons who meet the conditions of eligibility. . . ." H. Rep. No. 1300, 81st Cong., 1st Sess. (1949), p. 43. However, despite its critical role in the AFDC program, this provision has *never* been properly interpreted by the Department of Health, Education and Welfare in its administration of the billions of dollars of federal funds expended under the program. Instead, HEW has permitted the states to exclude persons from the AFDC program who meet federal eligibility standards. This Court has interpreted §402(a)(10) to prohibit such exclusions from AFDC coverage with a written opinion on three separate occasions, *King* v. *Smith*, 392 U.S. 309 (1968); *Townsend* v. *Swank*, 404 U.S. 282 (1971); and *Carleson* v. *Remillard*, 406 U.S. 598 (1972), and in the latter two cases decided in the 1971 Term the Court *expressly* rejected HEW's construction of the statute. Nonetheless, HEW has not taken any steps to revise its official interpretation expressed in published regulations, and it is safe

to say that, as a consequence, every state participating in AFDC is in violation of §402(a)(10) as construed by this Court. See *National Welfare Rights Organization* v. *U.S. Department of Health, Education and Welfare,* No. 264-73, filed February 13, 1973, D.D.C. Simply stated, we hope that a fourth written opinion based on §402(a)(10) might have a therapeutic effect on the federal agency.

A second reason for devoting our brief to a discussion of the effect of §402(a)(10) on the New York work rules is the rather unbelievable failure of either the State or County Appellants to discuss the issue in their Briefs. The state refers to §402(a)(10) with but a single citation (Br. 2) and then characterizes that section as being one of "the Federal statutes relating to the Work Incentive Program" which, of course, it is not. The State's brief does not even cite, much less discuss, *Carleson, Townsend* or *King*. The County appellants, on the other hand, do not cite §402(a)(10) in their brief, although they do make a single reference to "*Townsend* v. *Swank* . . . and similar cases" (Br. 16). Whether or not the appellants fail to discuss §402(a)(10) by accident or design, it is obvious that as a result, the nature of the case before the Court has been distorted by their presentations.

Summary of Argument

Section 402(a)(10) of the Social Security Act requires each state's AFDC plan to provide that AFDC "shall be furnished with reasonable promptness to all eligible individuals." In the 1971 Term of this Court, this requirement was twice interpreted to mean that

> "at least in the absence of Congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." *Townsend* v. *Swank*, 404 U.S. 282, 286 (1971).

See also *Carleson* v. *Remillard*, 406 U.S. 598, 600 (1972); *King* v. *Smith*, 392 U.S. 309 (1968). The New York work rules violate this requirement.

Under N.Y. Soc. Serv. L. §131.4, individuals determined to be "employable" are required to make a diligent search for day care, report bimonthly to the State Employment Service, and accept all job referrals and job offers in order to continue eligible for AFDC. These requirements are not imposed by the Social Security Act, and thus the New York rules exclude from AFDC many individuals who qualify for AFDC under *federal* standards. The only provisions in the Social Security Act requiring AFDC recipients to accept jobs, and otherwise participate in work-referral programs, are those in the Work Incentive Program (WIN) administered by the U.S. Department of Labor. See 42 U.S.C. §§602(a)(19), 630 *et seq.* New York's program excludes from AFDC individuals who have met, and agree to meet, all requirements imposed upon them pursuant to the WIN program.

Nothing on the face of the Social Security Act or its legislative history evidences an intention by Congress to authorize the states to deny AFDC to persons otherwise eligible under federal standards because of their failure to comply with compulsory work requirements administered

by a state welfare agency. Indeed, the Act and its history specifically evidence an intention to prohibit work-related eligibility requirements except insofar as they are administered under WIN. Thus, the original purpose of enacting the AFDC program in 1935 was "to meet a need unmet by programs providing employment for breadwinners." *King* v. *Smith, supra,* 392 U.S. at 328 (1968). The AFDC program, which provides financial aid to needy families with a dead, absent or incapacitated parent, was deemed necessary to release the remaining parent from the wage-earning role so that that parent could remain home and care for the child. This original congressional purpose was reaffirmed in 1949 when Congress, recognizing that it was "necessary for the mother or another adult to be in the home full time to provide proper care and supervision," H. Rep. No. 1300, 81st Cong., 1st Sess. (1949), at 46, added the caretaker relatives in AFDC families (e.g. the mother) as eligible individuals in their own right, 42 U.S.C. §606(b)(1), so that such relatives would receive financial assistance for their own basic needs and thus could better care for their children.

Initial congressional authorization for compulsory work requirements in AFDC occurred in the early 1960's when Congress added the children of unemployed parents to the AFDC program in 1961, 42 U.S.C. §607 (AFDC-U), and enacted community work and training programs which were largely for the unemployed fathers in that program, 42 U.S.C. §609. The AFDC-U fathers were placed under an obligation to accept job referrals in order to remain eligible since in those families the mother would be able to remain home to care for her child, and in other AFDC families Congress required the provision of day care before single

parents, usually mothers, could be compelled to participate in community work and training programs. In 1967, however, Congress repealed the authority for state-administered community work and training programs, repealed the requirement that AFDC-U fathers, as a condition of eligibility, accept any bona fide job offers made by the state, and replaced those provisions with the comprehensive WIN program administered by the U.S. Department of Labor. Committee reports reveal that Congress specifically intended to place all authority and responsibility for the administration of compulsory work requirements in the AFDC program with the federal manpower agency, and thus it rejected the original House proposal which would have mandated each state welfare agency to administer such work requirements.

The WIN program provided for testing, counseling and placement by the Labor Department, and included detailed provisions protecting recipients from harmful and inappropriate job referrals. In 1971 Congress expanded the WIN program and its emphasis on its approach in the 1967 amendments to rely only on the Department of Labor to administer the AFDC work program. Pub. L. 92-223, §3. The effect of the 1967 and 1971 WIN legislation was to establish clear congressional intent that the departure from the original purpose of AFDC, i.e. to permit the mother to remain home to care for her children, was to be countenanced *only* where the carefully delineated requirements of the WIN program were satisfied. That intent is inconsistent with the notion that Congress intended to authorize state non-WIN work eligibility requirements, which were considerably less protective of recipients' rights and were not administered by the federal manpower experts.

ARGUMENT

The New York work rules violate Section 402(a)(10) since they exclude from the AFDC program individuals who meet all federal requirements for the receipt of AFDC.

Section 402(a)(10) of the Social Security Act, 42 U.S.C. §602(a)(10), requires each state's AFDC plan to provide that AFDC "shall be furnished with reasonable promptness to all eligible individuals." Until the 1971 Term of this Court there had been considerable dispute over the scope of the term "eligible individuals" as used in §402(a)(10). This Court, in its first welfare case as long ago as 1968, had read the provision to prohibit the exclusion from AFDC of any child who qualified as a "dependent child" under §406, 42 U.S.C. §606. *King* v. *Smith, supra,* 392 U.S. at 333. Many lower federal courts thereafter interpreted *King* as requiring state AFDC programs to include all families who met the test of "need" and "dependency" established by the federal statute.[1]

The Department of Health, Education and Welfare, however, did not similarly construe *King* v. *Smith,* and it maintained its long-held view that the Social Security Act permits the states to define AFDC eligibility criteria in terms narrower than the statute's definition of dependent children. Under HEW's view, the "eligible individuals"

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[1] See, e.g., *Stoddard* v. *Fisher,* 330 F. Supp. 566 (D. Me. 1971); *Doe* v. *Shapiro,* 302 F. Supp. 761 (D. Conn. 1969), *appeal dismissed,* 396 U.S. 488 (1970); *Arizona State Dep't of Public Welfare* v. *HEW,* 449 F.2d 456 (9th Cir.), *cert. denied,* 405 U.S. 919 (1972). See Comment, "AFDC Eligibility Requirements Unrelated to Need: The Impact of *King* v. *Smith,*" 118 Penn. L. Rev. 1219 (1970).

referred to in §402(a)(10) to whom AFDC had to be furnished promptly were merely those individuals eligible under the *state's criteria*, and *King* v. *Smith* stood at most for the proposition that state rules are invalid only when specific federal statutory prohibition for such rules could be found, or where they were determined to be "unreasonable" by the Secretary. See Brief for the United States as *Amicus Curiae*, *Alexander* v. *Swank*, O.T. 1971, Nos. 70-5032, 70-5021, and *Carter* v. *Stanton*, No. 70-5082, August 1971, pp. 10-12, 15, 21-28.

The Court resolved this dispute in the 1971 term in two cases. In *Townsend* v. *Swank*, 404 U.S. 282 (1971), the Court unanimously invalidated an Illinois rule excluding needy children from AFDC if they were over age 18 and attended college, such children being dependent children according to §406. The Court held that

> "*King* v. *Smith* establishes that, at least in the absence of Congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." 404 U.S. at 286.

In a case decided six months later, the Court reiterated this interpretation of the AFDC program, and again held that federal standards determine who is "eligible" within the meaning of §402(a)(10). *Carleson* v. *Remillard*, 406 U.S. 598, 600 (1972). In *Carleson* HEW again sought to persuade the Court that a state rule must be sustained even where it excludes individuals eligible under federal standards unless a specific statutory prohibition against any such exclusion can be found. See Memorandum for

the United States as Amicus Curiae, O.T. 1971, No. 70-250, pp. 6-7. As it had in *Townsend*, the Court specifically disapproved HEW's policy, with particular reference to HEW's "equitable treatment" regulation.[2] *Carleson* v. *Remillard, supra,* 406 U.S. at 600; *Townsend* v. *Swank, supra,* 404 U.S. at 286, and n. 3.

The New York Work Rules run afoul of this construction of §402(a)(10). Under N.Y. Soc. Serv. L. §131.4, individuals determined to be "employable" pursuant to criteria set forth therein are required to report every two weeks to an office of the State Employment Service (SES) in order to pick up their regular AFDC grant. Such individuals are required to make a "diligent" search for day care for their young children, to follow up on each and every job "referral" made by SES, and, of course, accept any job offer they receive as a result of such referrals.

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[2] 45 C.F.R. §233.10(a)(1)(i), (ii) reads as follows:

(a) *State plan requirements.* A State plan under Title I, IV-A, X, XIV, or XVI, of the Social Security Act must:

(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. Under this requirement:

(i) States have substantial latitude and corresponding responsibility for determining the coverage, nature and scope of their public assistance programs. Although the public assistance titles define the coverage in which the Federal Government will participate financially, a State may provide coverage on a broader or more limited basis. However, it may not impose any eligibility condition that is prohibited under the Social Security Act.

(ii) The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act.

The failure to comply with any of these requirements, without "good cause," results in such individual's termination from the AFDC grant, and a prohibition against reinstatement for a minimum 30 day period even if the individual is willing to comply before the end of that period. N.Y. Soc. Serv. L. §131.4; 18 NYCRR §385 *et seq.* These eligibility requirements are conceded by all parties as not being *required* by the federal statute.

The only specific requirement pertaining to the mandatory acceptance of work or performance of related obligations appearing in the Social Security Act appears at §402(a)(19), 42 U.S.C. §602(a)(19). That section, fully discussed *infra,* requires each non-exempt AFDC recipient, as a condition of eligibility for AFDC, to register for the Work Incentive Program, §430 *et seq.,* 42 U.S.C. §630 *et seq.,* and provides that AFDC may be denied to such individuals who fail to register, or who, once registered, fail to meet all the requirements imposed upon them by the Work Incentive Program. 42 U.S.C. §602(a)(19)(F). Appellees, however, *have not failed to meet any such requirements.* Although they have met *every* eligibility requirement spelled out in the federal statute, and there is no dispute as to this, they are threatened by New York with exclusion from the AFDC program solely because of §131.4.

The question thus posed, then, is whether there is any clear evidence in either the Social Security Act or its legislative history for the imposition of these eligibility requirements which are in addition to those established by Congress, and which thus exclude from AFDC coverage individuals who qualify under *federal* standards. Compare *Taylor* v. *Martin,* 330 F. Supp. 85 (N.D. Calif.), *aff'd* sub

nom., Carleson v. *Taylor,* 404 U.S. 980 (1972); *Doe* v. *Swank,* 332 F. Supp. 61 (N.D. Ill.), *aff'd sub nom., Weaver* v. *Doe,* 404 U.S. 987 (1971); *Meyers* v. *Juras,* 327 F. Supp. 759 (D. Ore.), *aff'd,* 404 U.S. 803 (1971); *Carpenter* v. *Sterrett,* —— F. Supp. —— (No. 70 F. 138, N.D. Ind. April 24, 1972), *aff'd sub nom., Sterrett* v. *Mother's and Children's Rights Organization,* 409 U.S. 809 (1972). *Amici* will demonstrate below that clear evidence of congressional authorization for exclusions from AFDC on the basis of non-compliance with mandatory work-related requirements such as imposed by §131.4 cannot be found on either the face of the statute, or in its legislative history over the past 35 plus years. Indeed, we believe that to the contrary, a review of the statute and its history indicates a specific congressional intent to prohibit all mandatory work requirements *except* for those applied under the WIN program.[8]

Before reviewing this statutory framework, it is important to recognize that state non-WIN work requirements have not been unheard of in the AFDC program. Several states imposed such rules long before New York's enactment of §131.4. They did so, however, as a result of an interpretation of the Social Security Act by HEW which has since been rejected. Thus, HEW advised the district court in *Woolfolk* v. *Brown,* 325 F. Supp. 1162 (E.D. Va. 1971), *aff'd,* 456 F.2d 652 (4th Cir. 1972), *cert. denied,* 409 U.S. 885 (1972), the first court to invalidate state non-WIN work requirements, that such requirements had always been approved by HEW, despite the fact that Congress

[8] Under *Townsend* and *Carleson,* of course, the burden is on New York to demonstrate congressional authorization for such requirements. Appellees do not have to show a specific prohibition, although we believe such to be the case.

had not mandated them, since they were not deemed to be "unreasonable," and because states were otherwise authorized to restrict their AFDC coverage and exclude individuals who were eligible under federal standards. Brief of the United States as Amicus Curiae, *Woolfolk* v. *Brown*, No. 225-70-R, E.D. Va., Richmond Division, pp. 2-4.[4]

The HEW policy of authorizing state work requirements, expressed in its *Woolfolk amicus*, was adopted prior to the *Townsend* and *Carleson* decisions by this Court, however, and thus its underpinning has been repudiated. Indeed, although HEW has not published any revision of its *Woolfolk* position, and apparently still adheres to that position, see Memorandum on Behalf of the U.S. Department of Health, Education and Welfare as *Amicus Curiae*, *Jefferies* v. *Sugarman*, No. 72-8108, 2d Circuit, p. 3, the Department itself recognizes the implication of these cases on its policy. In the above cited *Jefferies amicus*, although it declined to take a position on the question, HEW noted that

> "Acceptance of employment by an employable person as a condition of eligibility is, apart from the WIN program, a product of state laws and regulations. *It is not a condition of eligibility required by the Social Security Act to be imposed on otherwise eligible AFDC applicants and recipients, nor is State choice in the matter recognized by the Act.* It could thus be argued that state work programs such as New York's are incompatible with the Social Security Act as interpreted by the Supreme Court in *Townsend* because they involve eligibility conditions which are not sanctioned by the Act or by its legislative history, without getting into the question of whether the WIN program preempts the

[4] The *Woolfolk* court rested its decision on the basis of the "preemption" argument advanced by appellees and did not reach the §402(a)(10) question.

state's work rules by reason of irreconcilable conflict between the federal and state standards." *Id.* at 5 (emphasis added).

HEW's *Jefferies amicus* goes on to cite *Meyers, Taylor* and *Doe*, cited by *amici* at pages 12-13, *supra*, noting that in these cases the Court "summarily affirmed three district court decisions striking down AFDC eligibility conditions based on the parent's cooperation in securing support from an absent spouse. *These decisions held that absence in the Social Security Act of express or implied authority for such conditions was a bar to their imposition.*" *Ibid.* (emphasis added).

In light of the discredited rationale for HEW's approval of state work requirements in AFDC, this Court should pay little deference, if any, to its practice of approving of such eligibility tests in other states.[5] HEW's interpretation of the Social Security Act to permit the states to narrowly define eligibility has resulted in the use of a wide variety of illegal rules by the various states. As noted in *Carleson* v. *Remillard*, *supra*, for example, twenty states used exclusionary eligibility rules similar to California's which denied AFDC to families of absent servicemen. 406 U.S. at 602, n. 3. Indeed, the failure of the federal agency to make any revision whatsoever in 45 C.F.R. §233.10(a)(1)(i), (ii),[6] after this Court's explicit rejection of that regulation 15 months ago in *Townsend*, and again 9 months ago in *Carleson*, see complaint, *NWRO* v. *HEW*, *supra*,

[5] HEW has never, to *amici's* knowledge, approved New York's program. Indeed, the last official communication to New York seriously questioned many aspects of the work rules, including, for example, the check pick-up requirement. Appendix, p. 203, exhibit 16. See *King* v. *Smith*, *supra*, 392 U.S. at 317, n. 11, 326, n. 23.

[6] See note 2, *supra* at 11.

renders suspect any argument they might offer in support of state work rules under §402(a)(10).

A. The Social Security Act and Its Legislative History With Regard to Compulsory Work Requirements

Amici contend that the Social Security Act and its legislative history demonstrate that at the time of enactment in 1935 there was an unambiguous congressional intent to extend federally funded AFDC benefits to all otherwise eligible dependent children *regardless* of whether the caretakers of such children agree to accept employment; that a limited and brief departure from this intent was countenanced during the mid-1960's; and that since 1968 the Congress has authorized a work condition of eligibility for AFDC *only* when such work requirements are administered through the Work Incentive Program run by the U.S. Department of Labor. Indeed, a review of the original enactment, subsequent amendments to the Act, and the extensive legislative history on the subject, will demonstrate that Congress specifically rejected the type of eligibility requirement New York now seeks to impose in its AFDC program. *Amici* believe that this clear legislative intent may best be discerned by a chronological analysis of the relevant AFDC legislation since 1935, which is set forth below.

1. *The Original Enactment in 1935*

The AFDC program was enacted as Title IV of the Social Security Act, Pub. L. 74-271, 74th Cong., 1st Sess. (1935), its single-minded purpose being to enable "each state to furnish financial assistance, as far as practicable under the conditions in such state, to needy dependent children," §401, 49 Stat. 627, which children were then defined

inter alia as children "under the age of sixteen who [have] been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who [are] living with [a specified relative]. . . . ", §406, 49 Stat. 629. There was absolutely nothing on the face of Title IV remotely resembling a work requirement for the relatives caring for the eligible dependent children, or suggesting Congressional approval for such requirements. The explanation for this may easily be found in the legislative genesis of Title IV.

As observed by this Court in its first AFDC case, "[t]he AFDC program was designed to meet a need unmet by programs providing employment for breadwinners." *King v. Smith, supra,* 392 U.S. at 328. Thus, the Committee on Economic Security, in its Report to the President, recommended several programs to combat the depression and provide "economic security"—an "employment assurance" program for those able to work who were unemployed; an unemployment compensation program to "increase the security of all who are employed"; an "old-age security" program consisting of a contributory insurance component and a noncontributory needs-related "pension" program; and a needs-related program for the "security of children." H.R. Doc. No. 81, 74th Cong., 1st Sess. (1935), at 3, 4, and 5. As the Committee noted, "[t]he measures we suggest all seek to segregate clearly distinguishable large groups among those now [1935] on relief or on the verge of relief and to apply such *differentiated* treatment to each group as will give it the greatest practical degree of economic security." *Id.* at 5 (emphasis added).

With respect to the children's program (AFDC), the Committee urged federal funding to enable the states to

continue or expand existing "mothers pension" programs which are

> "designed to *release from the wage-earning role* the person whose natural function is to give her children the physical and mental guardianship necessary not alone to keep them from falling into social misfortune, but more affirmatively to rear them into citizens capable of contributing to society." *Id.* at 30. (Emphasis added.)

See also Social Security Board, *Social Security in America* (1937), at pp. 233-34. The Administration accepted the Committee's recommendation for a program which would make it possible for mothers in one-parent families to remain at home and care for their children, and in its proposed "Economic Security Act" it articulated this purpose by defining "dependent children," the beneficiaries of the program, as

> "children under the age of sixteen in their own homes, in which there is *no adult person, other than one needed to care for the child or children, who is able to work* and provide the family with a reasonable subsistence compatible with decency and health." H.R. 4120, 74th Cong., 1st Sess. (1935), §203 (emphasis added).

The House Committee on Ways and Means reported to the House a modified version of the President's program. In the House bill, "dependent child" was defined to mean any

> "child under the age of sixteen who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt in a residence maintained by one or more of such relatives as his or their own home." H.R. 7620, §406.

Under the House bill, then, in order to qualify for aid the needy child had to be living with a near relative, but strikingly more liberal than the Administration's original proposal, was the apparent inclusion of needy children in homes in which both parents were present. Such a bill, which passed the House, would have in effect been a general relief program for all needy families with children under 16 years of age had it been enacted.[7]

The proposed Act was again modified before it reached the Senate floor. The Finance Committee amended §406 to limit the definition of "dependent child" to include needy children under 16 living with a near relative only when the child "has been deprived of parental support or care by reason of the death, continued absence from the home or physical or mental incapacity of a parent." Under the Committee proposal, which, as noted earlier, was accepted by the Senate and enacted into law, Pub. L. 74-271, 74th Cong., 1st Sess. (1935), §406, families in which both parents were healthy, and resided at home with the children, were rendered ineligible. It would appear, then, that the Senate (and the Congress) accepted the original Administration concept for AFDC, albeit using slightly different words to accomplish this purpose. That concept was a federally funded assistance program for families in which there was

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[7] Despite the inclusion of intact families in H.R. 7620, the Committee Report indicates that a major concern of the House was the "families lacking a father's support. . . . Nearly ten percent of all families on relief are without a potential breadwinner *other than a mother whose time might best be devoted to the care of her young children.*" H. Rep. No. 615, 74th Cong., 1st Sess. (1935), p. 10. (Emphasis added.) The Committee specifically noted that there were over 350,000 families on relief, the head of which was a "widowed, separated, or divorced mother and whose other members were children under 16." *Ibid.* Nonetheless, the Committee, and the House, did not limit the proposed program to such families.

only one healthy parent who was needed to remain home and care for the child full-time.[8]

Confirmation of this may be found in the description of the program's beneficiaries by the Senate Finance Committee in terms remarkably similar to the proposed statutory language in the Administration's bill. The beneficiaries were to be "the children in families which have been deprived of a father's support and in which *there is no other adult than one who is needed for the care of the children.*" S. Rep. No. 628, 74th Cong., 1st Sess. (1935), p. 17 (emphasis added). These were the children who could "not be benefited through work programs or the revival of industry." *Ibid.* See *King* v. *Smith, supra,* 392 U.S. at 328.

The above interpretation of the original AFDC legislation offered by *amici* is consistent with the interpretation given it by HEW and its predecessor federal agencies which have administered the program since its inception. Thus, in the federal *Handbook of Public Assistance Administration,* Pt. IV, §3401.1 (1946), it was noted that AFDC "is designed to provide as adequately as possible, such assistance and service as are essential to the rearing of children in family homes" and that such aid permits the mother in an AFDC family "to exercise some degree of *choice* as to what course of action she should follow with respect to seeking or continuing employment. . . ." The federal agency specifically recommended that state

[8] Eligibility for AFDC is based on the death, absence, or incapacity of *either* parent, although it is true that most AFDC cases are families headed by the *mother*. In New York, for example, less than 1% of AFDC cases are headed by the father. See "Characteristics of ADC Families in New York State, January 1971," NYSDSS, Program Analysis Report No. 50 (September 1972), p. 22.

agencies *not* adopt "any policy of denying or withdrawing aid to dependent children as a method of bringing pressure upon women with young children to accept employment." *Ibid.*[9] Recognizing the rationale for the program enunciated in the above legislative history, the original Bureau of Public Assistance noted that "in cases of families receiving aid to dependent children, children are already, in most instances, deprived of the care of one parent, and therefore, need the protection and personal supervision of the available parent." *Ibid.*

In sum, whatever one might say about changing public conceptions as to the purposes of AFDC, it is clear that Congress in 1935 hardly intended to authorize the states to force AFDC mothers out of the home and into jobs in order to qualify for AFDC. It provided federal funds to accomplish the reverse—to help such mothers stay at home full time in order to rear their children.

2. *The 1950 Amendments*

Under the original AFDC legislation, the federal government offered matching funds for assistance provided only on behalf of the dependent child; any aid paid to meet the needs of the child's caretaker relative was not subject to federal matching. See Pub. L. 74-271, §406(b), 49 Stat. 629. It was subsequently recognized that this failure discouraged states from providing aid to meet the relative's needs, and as a consequence, the caretaker, who was pre-

[9] While this policy was only "recommended," it must be remembered that HEW's and its predecessor's view of the Social Security Act was that Congress did not intend to mandate eligibility criteria on state welfare agencies, and thus it had no authority to *prohibit* such rules unless they were "inequitable." See 45 C.F.R. §233.10(a)(1); *Townsend* v. *Swan*, *supra*. See *supra* at 13-14.

vented from working because he or she was caring for the child, "would be forced to share in the meager payments made to the child." *Rodriguez* v. *Vowell*, —— F.2d —— (No. 72-1663, 5th Cir. Jan. 24, 1973), at 5. See House Committee on Ways and Means, Hearings on H.R. 2892 and H.R. 2893, 81st Cong., 1st Sess. (1949), at 14, 399.

In order to remedy this problem, the Administration recommended, and Congress accepted an amendment to §406(b) redefining "aid to dependent children" to include payments made "to meet the needs of the relative with whom any dependent child is living. . . ." §406(b)(1), 42 U.S.C. §606(b)(1), originally added by Pub. L. 81-734, §323, 81st Cong., 1st Sess. (1950), 64 Stat. 551. In advocating the need for this amendment, the House Committee on Ways and Means explained that

> "[i]n the present law, aid to dependent children is defined as payments with respect to a dependent child. No specific provision is made for the need of the parent or other relative with whom the child is living. Particularly in families with small children, *it is necessary for the mother or another adult to be in the home full time to provide proper care and supervision.*" H. Rep. No. 1300 to accompany H.R. 6000, 81st Cong., 1st Sess. (1949), at 46 (emphasis added).

Thus, Congress again articulated its concern that AFDC be made available to enable mothers in one-parent families to provide care for their children by freeing them from the wage-earning role, surely a concern that is inconsistent with the view that Congress intended at the same time to authorize state eligibility rules that forced mothers to accept work.

3. *The 1956 Amendments*

In 1956 Congress amended §401, the general "purpose" section of Title IV, to state for the first time that the AFDC program objective was "to help maintain and strengthen family life and to help . . . parents or relatives to obtain the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection." Pub. L. 84-880, §312, 84th Cong., 2d Sess. (1956), 70 Stat. 848. The State appellants rely on this purpose as establishing a Congressional intent to authorize state work programs (Br. 22). Such reliance is completely misplaced.

This amendment to §401 was accomplished simultaneously with amendments to the "purpose" provisions of *each* of the other categorical titles as well, all designed to express similar objectives ("self-care," "self-support," "independence," etc.), see Pub. L. 84-880, §§311, 313, 314, and each such amendment was implemented by the addition of a "plan requirement" to each categorical program mandating that a description of those rehabilitative *social services* that would be provided to recipients in order to assist them in fulfilling the new program objectives be included in the state plan. See 42 U.S.C. §§302(a)(10)(C) [OAA]; 602(a)(13)[AFDC]; 1202(a)(13)[AB]; 1352(a)(12)[APTD][10] as added by Pub. L. 84-880, §§311(b), 312(b), 313(b) and 314(b).[11] Federal matching was thereby

[10] The U.S. Code sections cited here are as renumbered subsequent to 1946, but are substantially identical to the provisions as added by Pub. L. 84-880. Other services provisions in Title IV are discussed later in this brief.

[11] Section 401 as amended in 1956 specifically provides that the new Congressional objective was to be furthered by the provision of "other services."

authorized for expenses in providing social services. See Pub. L. 84-880, §§311(c), 312(c), 313(c), 314(c), 70 Stat. 848-49. As Congress described these amendments, they were all designed to help "to strengthen family life and [to help] needy families and individuals attain the maximum economic and personal independence of which they are capable." Pub. L. 84-880, §300, 84th Cong., 2d Sess. (1956), 70 Stat. 846.

Surely these 1956 amendments were not intended to authorize compulsory work for the blind and disabled, and we doubt appellants would so argue, yet in the face of the original Congressional intent in AFDC outlined above, its reliance on these provisions to justify work-related eligibility conditions for AFDC would require such a conclusion. Moreover, relating to the provision of social services, the 1956 amendments surely did not countenance the adoption of *mandatory* work rules, since the acceptance of social services by recipients in the federal welfare programs has always been voluntary with the recipients. See, e.g., 45 C.F.R. §220.16(c).[12]

In short, the 1956 amendments were *not* a radical departure from the original congressional scheme for AFDC, but merely represented an affirmation of a non-cash alternative designed to facilitate rehabilitation by increasing

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[12] For example, HEW implemented the 1962 services amendments, discussed *infra* p. 27, by declaring that "[s]ervices aimed at helping the individual and family are based upon the client's interest and desire for help with his problems and upon respect for his right to freedom of choice in accepting or rejecting agency offers of service." HEW, *Handbook of Public Assistance Administration*, Pt. IV, §4241, *Definition of Social Services* (1964). Of course, services related to WIN may not be entirely voluntary. See 45 C.F.R. §220.16(c) and discussion *infra*, p. 31.

the alternatives open to recipients to lift themselves out of poverty.

4. *The 1961 and 1962 Amendments*

In 1961 Congress expanded the definition of "dependent child" in §406 to include, at the option of the states, children "deprived of parental support or care by reason of the unemployment . . . of a parent. . . ." §407, 42 U.S.C. §607, as added by Pub. L. 87-31, §1, 87th Cong., 1st Sess. (1961), 75 Stat. 75. Under §407, two parent families in which neither parent was incapacitated could, for the first time, qualify for AFDC. The exclusive focus of the original enactment in 1935, namely children who could not benefit by congressional steps to revive employment opportunities, was thereby altered in those states which adopted this new option.

Recognizing that this new group of eligible children *could* be benefitted by the employment of their "breadwinner," Congress mandated that states availing themselves of the AFDC-U option require parents eligible by reason of their unemployment to accept any bona fide offer of employment made by an employer, or by the public employment office in the state. Pub. L. 87-31, §1, 75 Stat. 75.[13] For the first time, Congress authorized the states to require acceptance of work as a condition of eligibility, but it did so *only* in the case of those families which had two able-bodied parents to take care of the children.

In 1962, one year later, Congress added another provision to the Social Security Act which had the effect of authorizing the states to compel work as a condition for the con-

[13] This provision was found in former §407(2)(B) of the Act.

tinued receipt of AFDC. Section 409, 42 U.S.C. §609, as added by Pub. L. 87-543, §§101(b)(2)(E), 105(a), 76 Stat. 180, 186, 87th Cong., 2d Sess. (1962), and repealed by Pub. L. 90-248, §204(c)(2), 90th Cong., 1st Sess. (1968), 81 Stat. 892. Section 409, entitled "Community Work and Training Programs," authorized the states, at their option, to set up programs whereby AFDC recipients over age 18 would be compelled to accept work on public projects, at not less than the minimum wage (if applicable) or the prevailing wage rate, as long as such projects satisfied certain health and safety standards prescribed by the Congress.

Programs under §409 were to be administered by the state welfare agency and, indeed, work assignments were to be either with that agency or some other public agency. Refusal of any AFDC recipient to accept such a work assignment without "good cause" was specifically designated as grounds for a state's denial of AFDC to such recipient. 42 U.S.C. §609(a)(1)(G). In other words, Congress intended that participation in a community work and training (CW&T) project would be a permissible condition of AFDC eligibility.

While the provisions of §409 were not restricted on their face to the two-parent families eligible under §407 because of the unemployment of a parent, Congress expected that the CW&T programs would "be used primarily for the unemployed fathers." H. Rep. No. 1414, 87th Cong., 2d Sess. (1962) at 16; S. Rep. No. 1589, 87th Cong., 2d Sess. (1962) at 12.[14] The thrust of §409 was directed at the two-

[14] In states that chose to extend work programs under §409 to one parent families eligible because of the death or absence of a parent, appropriate day care for the children had to be arranged. 42 U.S.C. §609(a)(4); H. Rep. No. 1414, *supra* at 16; S. Rep. No. 1589, *supra* at 12.

parent families added by the 1961 AFDC-U amendment since, as the two congressional committees noted, that amendment had "introduced, *for the first time,* an identifiable group of employable people into the federally aided public assistance programs" and, as a consequence, both congressional committees believed provision "must be made to deal with the problem of useful work for the unemployed parent." H. Rep. No. 1414, *supra,* at 15; S. Rep. No. 1589, *supra,* at 11 (emphasis added). As a matter of fact, from the inception of §409 HEW recognized that "[i]n most instances the employable father will be the participant in this program," HEW *Handbook of Public Assistance Administration,* Pt. IV, §3462.2 (1963), repealed, Handbook Transmittal No. 149 (1969), and of the eleven states which adopted CW&T prior to its repeal in 1968, *all* had AFDC-U programs and concentrated its functioning on the AFDC-U families. See Message From the President of the United States, H. Doc. No. 76, 90th Cong., 1st Sess. (1967), at 25, 27. In sum, the 1961-62 AFDC amendments authorized state work requirements for the first time, and did so primarily because of the addition of two parent families to the AFDC program.

The 1962 amendments were also noteworthy for their significant expansion of federal assistance to the states for the provision of social services. See *King* v. *Smith, supra,* 392 U.S. at 325, n. 22. Thus, Congress added a new plan requirement to AFDC providing for the "development and application of a program for . . . welfare and related services for each child who receives [AFDC]," Pub. L. 87-543, 87th Cong., 2d Sess. (1962), §103, 76 Stat. 185, and in addition, increased federal matching to 75% for those services which were provided to recipients in order

to help them "attain or retain capability for self-support or self-care," or to strengthen family life or prevent or reduce dependency, Pub. L. 87-543, §101(a)(2), 76 Stat. 175. While services were to be provided by the states to enhance potential for self-support, as noted above such services were to be provided *only* when requested by a recipient, HEW *Handbook of Public Assistance Administration*, Pt. IV, §4241 (1964), and they hardly provide support for the imposition of compulsory work requirements.

5. *The 1967 WIN Amendments*

The 1967 amendments to the Act (signed January 2, 1968), enacted by Pub. L. 90-248, §204, 90th Cong., 1st Sess. (1968), 81 Stat. 884, were, of course, the most critical with respect to the issue of the states' authority to mandate acceptance of work as a condition of eligibility for AFDC. Those amendments, discussed fully in appellees' brief, established an entirely new segment of the AFDC program, the Work Incentive Program (WIN), Part C of Title IV, to be administered not by HEW, but by the U.S. Department of Labor. In so doing, the Congress repealed the authority for work and training programs under §409, and repealed the provisions of the AFDC-U program referred to earlier which had previously authorized compulsory work requirements for AFDC-U administered by state welfare departments.

Amici contend that these provisions evidence a specific congressional intent to authorize the denial of AFDC for refusal to work *only* when such refusals occur within the framework of the WIN program. An examination of the parameters of WIN, and its immediate legislative history, will demonstrate that Congress' overriding solicitude for the care of children in their own homes by their remaining

parent was modified to account for changing conceptions as to the employability of AFDC mothers, but that the original congressional concern for "single" parents and their children was *not* thereby abandoned. Instead, Congress carefully devised a program to maximize the employment potential of such mothers which would not impede their ability to function as parents, and which would at the same time offer the best hope for their entrance into meaningful employment on a permanent basis.

The WIN amendments as enacted in 1968 required each state AFDC plan to provide for the "prompt referral to the Secretary of Labor" of "each appropriate" recipient of AFDC over age 16 for "participation under a work incentive program established by part C." 81 Stat. 890 (former §402(a)(19)(A)). Congress carefully limited the welfare agency's discretion in determining who was "appropriate" for referral to WIN by specifically exempting from referral persons who were incapacitated, geographically remote from WIN projects, attending school, or required in the home to care for others. *Ibid.* (former §402(a)(19)(A)(iv), (v), (vi), (vii)). Furthermore former §402(a)(19)(F), 81 Stat. 891, specifically provided that individuals referred to the Secretary of Labor under §402(a)(19)(A) or under §407(b)(2) (AFDC-U)[15] who were found *by the Secretary of Labor* to have refused participation in WIN without good cause must be denied AFDC until they were willing to participate. Standards for determining whether a recipient had "good cause" for a job refusal were, of course, set by the Secretary of Labor. Moreover,

[15] The AFDC-U program was simultaneously amended to require that AFDC-U fathers be referred to the WIN program within 30 days of receipt of AFDC, Pub. L. 90-248, §203(a), 81 Stat. 883. See *infra* at 36, and note 17.

such grant reduction penalties for refusal to participate could not be invoked by the state welfare agency for 60 days if, during such period, the uncooperative recipient "accepts counseling or other services (which the state agency shall make available . . .) aimed at persuading such [recipient] . . . to participate in such program in accordance with the determination of the Secretary of Labor." *Ibid.*

There were three basic types of programs which the Secretary of Labor was instructed to establish. First, direct placement into regular employment and on-the-job training; second, institutional and work experience training for individuals who were likely to obtain regular employment as a result of such training; and third, special work projects for those for whom jobs in the regular economy could not be found. 81 Stat. 884-85 (former §432(b)). These programs were required to be established by the Secretary of Labor in each state and political subdivision thereof in which a "significant number" of individuals receive AFDC. In other areas the Secretary of Labor was directed to "use his best efforts" to either set up programs or transport recipients to other programs. 42 U.S.C. §632(a).

Congress required the Secretary of Labor to provide testing and counseling to determine which type program, if any, was most suitable for a particular recipient, priority being given to regular jobs or training, 81 Stat. 885 (former §433(a)), and to develop an "employability plan" for those suitable persons referred to him "which shall describe the education, training, work experience, and orientation which is determined that each such person needs to complete in order to enable him to become self-

supporting." 81 Stat. 885 (former §433(b)). Moreover, in addition to the counseling, testing and referral services regularly made available through the Federal-State Employment Service System, the Secretary of Labor was directed to provide

> "program orientation, basic education, training in communications and employability skills, work experience, institutional training, on-the-job training, job development and special job placement and followup services, required to assist participants in securing and retaining employment and securing possibilities for advancement." 42 U.S.C. §633(d).

Finally, in conjunction with the enactment of the WIN program, Congress added two new provisions to the AFDC program relating to the provision of social services to enhance the potential employability of AFDC recipients. The first required the development of a services "program" for adult recipients as an addition to that already mandated for the children in 1962, such services designed to assist recipients in attaining capability for "self-support" and to strengthen family life and foster child development. See §402(a)(14), 42 U.S.C. §602(a)(14), as added by Pub. L. 90-248, §201(a)(i)(B), 81 Stat. 877. The second required the development of a program for each "appropriate" recipient designed to help such individuals find employment, and mandated that such programs would be implemented by the states by providing child care and family planning services to persons "referred" to the new WIN program. See §402(a)(15), as added by Pub. L. 90-248, §201(a)(1)(B), 81 Stat. 878 (substantially revised by Pub. L. 92-223, §3(a)(1), discussed *infra* at 41).[16]

[16] These services were matched at the same 75% rate set by the 1962 amendment for services "specified" by the Secretary of HEW. Pub. L. 90-248, §201(c), 81 Stat. 879.

As can be readily seen even from a quick perusal of these provisions, with the adoption of WIN Congress set up a detailed framework within which AFDC recipients would be tested, counseled, trained, and provided social and manpower services to enable them to achieve maximum self-support consistent with their parental responsibilities. *Amici* fully agree with appellees' contention that this substantial federal intervention in the area of recipient/work programs was intended to preempt state legislation on the subject. At this point, however, quite apart from the preemption issue, we strenuously urge that the specificity of the statute, its broadsweeping range, and its intricate network of protections and services offered to recipients, hardly may be said to "clearly evidence" an intent to authorize state *non-WIN* work requirements that operate to deny AFDC to individuals refusing to cooperate with such requirements but who are willing to cooperate with all demands made upon them by the Secretary of Labor in the WIN program. A review of the legislative history of WIN will confirm this interpretation.

a. The Administration's proposal

After five years experience with the CW&T programs established by §409, HEW submitted a proposal to the Congress which would have retained that program *and* established an entirely new federally-administered work-referral program. H.R. 5710, 90th Cong., 1st Sess. (1967), provided *inter alia* for the establishment of CW&T programs to be operated not by the states, but by the Secretary of Labor, H.R. 5710, §204(i) (proposing a new §410 to the Act), and to which the states would be *required* to refer "all appropriate individuals" over 16 who were receiving AFDC, H.R. 5710, §204(a) (proposing a new §402

(a)(15) to the Act), and for the addition of a new requirement to the AFDC program which would have forced each state to implement a CW&T program conforming to §409

> "only if the Secretary of Labor or his delegate does not maintain and operate any work or training program as authorized under section 410 in the State, and has certified that it is not practicable for him to maintain and operate a program anywhere in the state." H.R. 5710, §204(a) (proposing a new §402(a)(16) to the Act).

Individuals refusing to accept employment offered under either the new Department of Labor program or under a §409 CW&T program where that was in effect would be denied AFDC unless they had "good cause" for such refusal. *Ibid.*

In 1967, at least, HEW understood the basic inconsistency in the side-by-side operation of state work rules and a special Department of Labor work referral and manpower services program. As explained by HEW, its proposal "would provide for programs to be operated by the States *if* the Secretary of Labor did not operate a program and found it impractical to do so throughout a state. . . ." Comm. on Ways and Means, Committee Print, Section-By-Section Analysis and Explanation of Provisions of H.R. 5710, 90th Cong., 1st Sess. (1967), at 8 (emphasis added).

Thus, the original 1967 proposal continued the authorization for state-operated CW&T programs and referral thereto as an eligibility condition for AFDC, and added a new eligibility condition to be imposed *in place of* the §409 program wherever the Department of Labor created its own CW&T program.

b. The House bill

The House approach was different than the Administration's. While the House bill also would have required each state to establish a community work and training program under §409, see H.R. 12080, 90th Cong., 1st Sess. (1967), §204(b) (proposing a new §402(a)(21)), it rejected the Administration's suggestion that an entirely new work program be established and maintained by the Secretary of Labor. In its place, the House bill aded two new AFDC plan requirements. The first mandated each state to "assure that all appropriate [recipients of AFDC] . . . register and periodically reregister with the public employment offices of the State," H.R. 12080, §204(b) (proposing a new §402(a)(19)). The second required that such registration and the acceptance of "employment in which [the recipient] is able to engage and which is offered through the public employment offices of the State or is otherwise offered by an employer," or participation in a §409 project, be imposed as a condition of eligibility for AFDC, H.R. 12080, §204(a) (proposing a new §402(a)(20)). Parallel requirements were added to the AFDC-U program by the House bill, H.R. 12080, §203(a) which in essence were the same as those originally included in §407 in 1961, 75 Stat. 75, see *supra*, at 25.

In addition to these mandatory work requirements, the House proposed to add a provision which would have required "the development of a program" for each appropriate recipient with the objective of assisting such recipients to enter the labor force and of preventing illegitimate births, and "the implementation of such programs" by the provision by the welfare agencies of such employment-related services as "child-care services and testing, coun-

seling, basic education, vocational training, and special job development. . . ." H.R. 12080, §201(a)(1).

The House bill thus proposed a condition for AFDC eligibility remarkably similar to that imposed by New York's work rules, and would have placed the responsibility for the operation of the proposed work program, including the provision of manpower services, on the state welfare agency under the supervision of HEW. Standards "to protect mothers from undue hardship in work and training assignments" would be issued by HEW, H. Rep. No. 544, 90th Cong., 1st Sess. (1967), at 104, and determinations as to whether or not a refusal to work was with "good cause" would be made at a "fair hearing," which is the administrative responsibility of the state welfare agency under 42 U.S.C. §602(a)(4). *Ibid.* If the House bill had been enacted into law, a reversal of the decision below might well be appropriate. It was not, however.

c. The Senate bill

The Senate version of H.R. 12080 with respect to the work requirements therein, and with certain modifications, was enacted by Congress. As noted earlier, the Work Incentive Program which was established therein was to be run by the Department of Labor, *not* by HEW and the state welfare agencies. The Senate thus borrowed one of the concepts originally advanced by the Administration in H.R. 5710. In addition, provisions in the House bill requiring registration with public employment agencies and acceptance of any bona fide job offer were deleted by the Senate bill, as was the requirement of both the Administration's and House bills that §409 community work and training programs be established in each state. Indeed, as

noted above, the Senate bill *repealed* §409, Pub. L. 90-248, §204(c)(2). Moreover, the Senate amended the provisions dealing with unemployed fathers, §407, 42 U.S.C. §607, to require that states refer such fathers to the Secretary of Labor under the new WIN program within 30 days. H.R. 12080 as passed by Senate, §203(a), enacted §407(b)(2)(A), 42 U.S.C. §607(b)(2)(A). The Senate added this provision, and deleted the House-proposed requirements and the existing 1961 requirements that AFDC-U be denied when fathers rejected bona fide job offers made by public employment agencies or by employers, in order to "tie the program to the work incentive program established by the bill." S. Rep. No. 744, 90th Cong., 1st Sess. (1967), at 160; Conf. Rep. No. 1030, 90th Cong., 1st Sess. (1967), at 58.[17]

Finally, the Senate accepted the thrust of the House amendments relating to the provision of social services to enhance employability, but revised the House bill in order to place the responsibility for the manpower services with

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[17] The repeal of the provision requiring AFDC-U fathers to accept any bona fide job offers as a condition of eligibility, and its replacement by the provision requiring referral of such individuals to WIN within 30 days, demonstrates that the County appellants' reliance on §407, and its original 1961 legislative history (Br. 18), is completely misplaced. Section 407 as currently written merely requires AFDC-U fathers to register with public employment offices, 42 U.S.C. §607(b)(2)(C), but termination of AFDC-U for refusal to work by such fathers is governed solely by WIN, 42 U.S.C. §602(a)(19)(F). Moreover, the provision of §407 on which appellants specifically rely, 42 U.S.C. §607(b)(1)(B), which provides that AFDC-U may be provided only when a "father has not without good cause, within such period (of not less than 30 days) as prescribed by the Secretary, refused a bona fide offer of employment or training for employment," on its face does not apply to deny AFDC-U *after* the prescribed time period, which is 30 days (45 C.F.R. §233.100(a)(3)(ii)). After that period, eligibility is governed exclusively by WIN regardless of any prior job refusals.

the Department of Labor which was to administer the work program, retaining within the welfare agency the responsibility for providing such supportive social services as child care and homemaking services. See H.R. 12080, as passed the Senate, November 22, 1967, §201(a)(1), and Conf. Rep. No. 1030, *supra*, at 55. These revisions became Pub. L. 90-248, §201(a)(1), 81 Stat. 881, adding §402(a)(15) to the Act (later amended by Pub. L. 92-223). Those welfare agency services were required "to make it possible for adult members of the family to take advantage of the work and training opportunities under the work incentive program." S. Rep. No. 744, *supra*, at 146.

The conclusions to be drawn from congressional acceptance of the Senate's approach are clear. In rejecting the suggestions for state operated work-referral programs, either under §409, or as a separate condition of eligibility imposed under §402, and in requiring unemployed fathers to be referred to work under WIN, not state work rules, Congress determined that the best approach for maximizing the employment potential for AFDC recipients consistent with their obligation to provide parental supervision rested in a federally-administered manpower services program. The transfer of manpower service functions to the Department of Labor confirms this. Such an explicit determination as to how to proceed with the business of obtaining employment for AFDC mothers is surely inconsistent with the view that Congress at the same time intended to authorize the states to deny AFDC to recipients who failed to participate in state-run work programs. Indeed, the Senate's rejection of the House approach, which relied on state operated programs, and the Administration's, which relied on a combination of state and federal programs, could not have been more explicit.

Referring to its amendments as "a new direction for AFDC legislation," the Senate Report notes that its legislation "incorporates certain desirable changes in the method of administration and program emphasis." S. Rep. No. 744, *supra*, at 146. The Senate Finance Committee stated that while the Committee was in "complete agreement with the purpose of the House bill that as many AFDC recipients as possible become employed and independent . . . the program which we have developed will *better serve* that purpose." S. Rep. No. 744, *supra*, at 147 (emphasis added). Its "program," of course, was to place "full authority . . . responsibility, and accountability" for administration with the federal manpower experts, the Department of Labor. *Id.* at 151-52. The committee envisioned that this approach would be "the most effective" and could be implemented "in the most rapid fashion," at "a lower net cost." *Id.* at 147. The reason for this prognosis is that WIN would utilize "the full range of manpower services provided under legislative authorities available through the Department of Labor. . . ." *Ibid.*

d. Conclusion

Amici believe that the 1967 WIN amendments demonstrate that Congress did not abandon its original concern that AFDC children receive proper parental care and supervision; that it rejected state-operated work referral programs as inconsistent with this primary concern in that the lack of direct federal control over such programs made it difficult to assure that they were sufficiently protective of recipient needs, and since they were not administered by agencies most suited to providing the necessary employment-related services; and that it intended to prohibit the states from denying AFDC to individuals otherwise eli-

gible under federal law even if they refused work referrals, *unless* such referrals were pursuant to the WIN program. As the Finance Committee noted, persons not "appropriate" for referral to WIN "would not be placed in *any* work situation unless they chose to request employment or training." S. Rep. No. 744, *supra*, at 147 (emphasis added).

6. *The 1971 Amendments*

Public Law 92-223, 92d Cong., 1st Sess. (1971), §3 (the "Talmadge Amendment"), enacted in December 1971, provided for a series of changes in the WIN program which became effective on July 1, 1972, and which were intended "to make a number of needed improvements in the work incentive program." 117 *Cong. Rec.* S20569 (Daily ed. December 4, 1971) (remarks of Sen. Talmadge). *Amici* contend that these revisions of WIN emphasize Congressional intent that AFDC recipients not be forced to work except through the apparatus of the WIN program. A brief description of some of these revisions follows.

First, obviously dissatisfied with even the minimal discretion afforded the states by the 1967 amendments to define which recipients were "appropriate" for "referral" to WIN, Pub. L. 90-248, §204(b), 81 Stat. 890, see *supra* at 29, the Talmadge amendment eliminated this provision and required instead that "*every* individual, as a condition of eligibility for aid under [Title IV] . . . shall register for manpower services, training and employment as provided by regulations of the Secretary of Labor. . . ." §402(a)(19)(A), as amended by Pub. L. 92-223, §3(a)(2), 42 U.S.C. §602(a)(19)(A). Exemptions from this mandatory registration requirement are also set forth by Congress, and include children under 16, full-time students, incapacitated

persons, those "so remote" from a WIN project that "effective participation is precluded," those needed in the home to care for another member of the household, mothers with children under six, and mothers in two parent families where the father registers. *Ibid.*

Second, recognizing that cooperation between the state welfare agency and the Labor Department component operating WIN in the state was essential to the successful operation of WIN, Congress took steps to mandate such coordination. Thus, the Talmadge amendment requires each state to establish a "separate administrative unit" (SAU) of its welfare agency which would be responsible for providing necessary social services to WIN registrants, and which "to the maximum extent feasible" would perform services *only* in connection with WIN. §402(a)(19)(G), as amended by Pub. L. 92-223, §3(a)(6)(ii), 42 U.S.C. §602(a)(19)(G). Congressional intent to focus welfare agency administration on the WIN program, and *not* on independent state work programs, is clearly evident in this provision.

In addition, the SAU is specifically directed "to participate in the development of . . . employability plans [with the Labor Department] under section 433(b) . . . ," and to provide "such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable [recipients] to accept employment or receive manpower training *provided under part C* [WIN]." *Ibid.* (emphasis added). Indeed, where, after joint consultation on the employability plan, the SAU and Labor disagree as to the nature of services required to ready the recipient for employment or training, the *Labor* determination is binding. See 29 C.F.R. §56.5(c); 45 C.F.R. §220.35(b)(4). The careful particularization of the role of

the welfare agency in planning for the development of an employment program for AFDC recipients, and readying such recipients for employment, is itself evidence of an intent to restrict the work-related activity of state welfare agencies to the WIN program. Cf. *Townsend* v. *Swank*, *supra*, 404 U.S. at 287.

Thirdly, the Talmadge amendments made absolutely clear Congressional intent that *no* AFDC recipient be required to work or participate in a training program until necessary supportive services are provided through the WIN program. Thus, as mentioned above, the SAU is obligated to provide those supportive services deemed necessary by the manpower agency. Congress clarified the welfare agency's precise obligation vis-a-vis supportive services originally established by the 1967 amendments, Pub. L. 90-248, §201(a)(1), 81 Stat. 877-78, by eliminating the employability services requirement from §402(a)(15), Pub. L. 92-223, §3(a)(1), placing it within the WIN requirement in §402(a)(19), and specifying the minimum services to be provided. Pub. L. 92-223, §3(a)(7). Moreover, federal funding for those services will be matched at a 90% rate, instead of the more usual 75% level at which services are generally matched. §403(d)(1), as amended by Pub. L. 92-223, §3(a)(9), 42 U.S.C. §603(d)(1). Only *after* such services have been provided or arranged, may the welfare agency's SAU "certify" the recipient to the Secretary of Labor as "ready for employment or training under part C [WIN]." 42 U.S.C. §602(a)(19)(G)(ii). It is only those individuals who are so "certified" to Labor who may be terminated from the AFDC program for refusal to accept a job offer or training opportunity (if such refusal was without "good cause" as found by the Secretary of Labor under

42 U.S.C. §633(g)). See §402(a)(19)(F), as amended by Pub. L. 92-223, §3(a)(6)(i), 42 U.S.C. §602(a)(19)(F).[18] Included within this protection are AFDC-U fathers who now must be "certified" to the Secretary of Labor within 30 days, §407(b)(2)(B), as amended by Pub. L. 92-223, §3(a)(10), 42 U.S.C. §607(b)(2)(B).

By adding the explicit provisions on supportive services and certification, Congress was articulating its desire that AFDC recipients not be referred to work or training unless they were emotionally, physically and/or intellectually able to take advantage of that opportunity. It is well understood that AFDC recipients often have special problems which prevent them from working, problems created in large measure because of their poverty, lack of education, and their status as head of household in one-parent families.[19] Thus, supportive services which have to be

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[18] In this regard, the County appellants argument that §402(a)(19)(F) specifically authorizes state work referrals separate from WIN (Br. 16-17) misreads that provision. While §402(a)(19)(F) does provide that AFDC may be denied where recipients refuse bona fide offers of employment without good cause offered by either employers or public employment agencies, in addition to sanctioning the denial of AFDC for refusal to participate in WIN, such a denial of aid may *only* be imposed upon recipients "certified to the Secretary of Labor pursuant to subparagraph (G)," and *only* when the Secretary of Labor (*not* the state welfare agency) finds such a refusal to be without "good cause." The WIN 60 day counseling period applies as well. Thus the language relied upon merely recognizes an additional source of employment opportunities for those whom the *WIN agency* believes are ready for work, and where the *WIN agency* agrees that the job should have been taken under *Department of Labor* standards.

[19] Such problems were recognized by Congress in 1967 when it enacted WIN. See, for example, H. Rep. No. 544, *supra*, at 97-98, where the Committee on Ways and Means, referring to its proposal for services, noted that many recipients had "serious social, vocational, and educational handicaps" and that "much careful and patient work will be needed in order to accomplish the ob-

provided where needed include the following: child care, family planning, health-related services, homemaker services, home management and other functional educational services, housing improvement services, transportation, and vocational rehabilitation services. See 45 C.F.R. §220.35 (b)(2); HEW, *Handbook for the Work Incentive Program*, §§90-100 (1972). Congress sought to maximize the likelihood that recipients referred to work would get off, and stay off, the welfare rolls because they were prepared *in fact*, not theory, for a job. Congress was unwilling to waste federal time and resources on placements which did not offer hope for permanent jobs, even if the initial placement would be "delayed" until the necessary services were provided. Surely it did not intend to authorize states to refer recipients to work outside of this protective and rehabilitative structure which it had designed.

Finally, as if to underscore its intention to rely *exclusively* on WIN as the only mechanism under which AFDC recipients could be denied aid for refusal to work, Congress imposed a financial penalty on states which fail to certify annually to WIN at least 15% of the average number of those "required to be registered." §403(c), as amended by Pub. L. 92-223, §3(a)(8), 42 U.S.C. §603(c). Congress sought by this provision to induce the states to exert maximum efforts to provide the necessary supportive services

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jectives of the bill." In implementing the 1971 amendments HEW noted that "[m]others and caretaker relatives undoubtedly need the most services, particularly if they have no previous work history or have been out of the labor market for a long time. In addition, since women will be carrying two jobs when they enter WIN (homemaking and training or working), they need more preparation to start the program, continue it, and successfully get and hold a job." HEW, *Handbook for the Work Incentive Program*, §50.3 (1972).

required by the Labor Department, and to thereby maximize the number of recipients "ready" for placement. Congress obviously believed that the relationship between certifications and registrations in WIN provided an accurate basis for evaluation of the performance of a state's welfare agency in aiding AFDC recipients in finding jobs. Since the loss of federal reimbursement may not be overcome by any number of non-WIN placements, Congress obviously did not intend to authorize the states to force AFDC recipients to work outside of WIN, simultaneously with imposition of the fiscal sanction based solely on the rate of WIN certifications.

7. *The 1972 Amendments*

Congress' most recent rejection of state work requirements came in the last session. A Senate-passed amendment to H.R. 1, 92d Cong., 2d Sess. (1972), the Social Security Amendments of 1972, would have repealed the 1968 repeal of §409, the community work and training programs, thus reinstating §409 as an operative provision of the Act. Conf. Rep. No. 92-1605 on H.R. 1, p. 29, rejecting Senate amendment #567. (Amendment #567 provided *inter alia* for the repeal of Pub. L. 90-248, §204(c)(2), which provision repealed §409. See 118 *Cong. Rec.* S16802 (Daily ed. October 4, 1972).) This rejection, together with the 1971 strengthening of WIN, confirms Congress' commitment to WIN as the exclusive job referral program in AFDC, and its intent to prohibit the denial of AFDC to otherwise eligible individuals for refusal to accept employment unless such offers are made pursuant to WIN.

B. Practical Distinction Between WIN and the New York Work Requirements

An analysis of some of the practical differences between WIN and the New York work requirements will help to demonstrate why Congress did not authorize states to impose state-administered work requirements as a condition of eligibility for AFDC despite its basic acceptance of an AFDC work-referral program in 1967. Such a comparison is, of course, merely illustrative, since *amici* contend that Congress has prohibited *all* state work tests, Virginia's and Mississippi's, as well as New York's, and that a contrary ruling by this Court would authorize the states to adopt work requirements even more burdensome and unproductive than New York's.[20]

For example, as implemented prior to the injunction below, New York's work rules required persons who were specifically exempted by Congress from compulsory work under WIN, such as mothers with children under age 6, to accept job offers in order to remain eligible for AFDC. See 18 NYCRR §385.1. A reversal of the decision below would enable New York to classify *anyone* as "employable" and subject to the work requirements, since the protections of WIN would be inapplicable. Cf. *Woolfolk* v. *Brown*, *supra*, 325 F. Supp. at 1164.[21]

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[20] *Amici* make this statement in recognition of the fact that it would be well-nigh impossible for HEW or the judiciary to evaluate on an *objective* basis any particular work program in terms of its desirability or likelihood of success, even if the measure of those terms is such a program's *resemblance* to WIN and the procedures and services provided thereunder. Compare 45 C.F.R. §233.10(a)(1)(i), (ii), the "equitable treatment" or "reasonable classification" doctrine, *supra* at 11, n. 2, invalidated in *Townsend* v. *Swank*, *supra* and *Carleson* v. *Remillard*, *supra*.

[21] N.Y. Soc. Serv. L. §131.4 was amended in June 1972 (L. 1972, ch. 941, §1) to provide *inter alia* that, in AFDC, persons shall be

Secondly, under §131.4, the only supportive social services which must be made available prior to referral of an AFDC recipient to a job is child care. As noted in section A of this brief, the federal statute provides that job referrals under WIN may not be made until the welfare agency certifies to WIN that it has provided *all* supportive services which the WIN manpower agency determined to be necessary to ready the recipient for employment, such services including many more than the mere provision of day care. See *supra*, pp. 41 to 43. Congress surely did not intend the states to condition eligibility for AFDC on the acceptance of a job offer *before* those mandated services were provided, particularly in light of the fact that it has left it to the federal manpower experts, and *not* to the welfare agencies, to determine which services are "necessary" in a particular case.

Thirdly, the specific legislative determination to place the authority and responsibility with the Department of Labor for determining whether or not a refusal to accept a job offer was unjustified, and thus requiring AFDC payments to be terminated, is completely frustrated by New York's program. Thus, under WIN, as noted earlier, the standards for determining whether or not a recipient had "good cause" for refusing an offer are developed by the Department of Labor, the agency long accustomed to de-

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"deemed employable in accordance with the provisions of section three hundred fifty-e [WIN registration requirements]." It is unlikely New York believes this amendment requires a redefinition of "employability" since the state has not amended that definition in 18 NYCRR §385.1, perhaps in recognition of the fact that the WIN registration criteria in §350-e have nothing to do with "employability" or readiness for employment. In any case, *amici* note that a reversal would permit New York unfettered discretion to define who must accept work in order to receive AFDC.

veloping such standards for other programs, see 29 C.F.R. §56.25; DOL, Manpower Administration Manual, *Work Incentive Program Handbook*, §9360(7) (1972), and the hearings to resolve questions as to "good cause" are conducted by the Secretary of Labor, whose determinations are binding on the state welfare agency. See 45 C.F.R. §233.11(g). In sharp contrast, such determinations are made under New York's work rules by *welfare* agency personnel at the local level, subject to appeal to the state *welfare* agency at a fair hearing. See, e.g., 18 NYCRR §§385.6, 358.4. New York merely requires welfare officials to "take into consideration the report of the State Employment Service [SES], employment agency *or* prospective employer," 18 NYCRR §385.6(b) (emphasis added), but a *hearing* conducted by SES personnel is not afforded, and thus the input of the manpower agency *where it is obtained,* is adversarial, the aforesaid SES "report" obviously having been prepared by the person who made an initial determination that the refusal was unjustified.

One of the most glaring differences between WIN and the New York rules, and one which has enormous practical consequences, is in the timing of the hearings afforded on refusals to cooperate, and the sanctions imposed for such refusals. In WIN, the Labor Department "good cause" hearings are conducted *prior* to a recipient's being forced to accept the burdens of job placement, or other requirements of participation, see 29 C.F.R. §§57.2-57.11, and as long as the recipient is willing to cooperate with WIN in the event he or she is unsuccessful at the hearing, no interruption in AFDC benefits is suffered. See 42 U.S.C. §602 (a)(19)(F) which provides for the denial of AFDC "if *and for so long* as any child, relative, or individual" re-

fuses to cooperate without good cause (emphasis added). Indeed, under the federal statute, AFDC benefits (in the form of "vendor" payments) continue for an *additional* 60 day "counseling" period *after* the hearing, even where the recipient does not immediately agree to accept a job offer, such counseling "aiming at persuading" the recipient to participate according to WIN's instructions. *Ibid.*

In contrast, under the New York rules a recipient who disputes the propriety of her classification as "employable," or who contests the adequacy of child care arrangements, or the suitability of a particular job, is forced to make an incredible choice. On the one hand, she may request a fair hearing and, if during the pendency of that hearing she does not participate in the state's work program, *i.e.* she maintains the *status quo*, she risks the imposition of a thirty day penalty of ineligibility in the event she does not persuade the hearing officer of the merits of her position. 18 NYCRR §385.7. This penalty is exacted even where the recipient is willing to comply immediately upon being notified of her hearing loss! *Ibid.* On the other hand, if the recipient wishes to escape this sanction, she must agree to comply with *all* of the work rules pending the fair hearing decision. Thus, she must report every two weeks to SES to pick up her AFDC check (an unreimbursed transportation expense), accept the day care arrangement which she may believe to be inadequate, and even accept a job which she may believe is injurious to her health. If her claims are indeed valid ones, the risks of the incorrect welfare agency determination are, of course, enormous.[22]

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[22] The unfairness in this procedure is compounded by the fact that New York takes an inordinate length of time in adjudicating fair hearing requests, particularly in non-*status quo* cases. See,

It is not without significance that a joint federal/state study of the operation of the New York work rules revealed an alarming misclassification rate of approximately 67%. HEW, DOL, NYSDSS, NYSDOL, *Study of Public Assistance Employables,* March 1972, p. 19. Apart from indicating the wisdom of Congress' decision to have *manpower,* not welfare, officials make determinations pertaining to readiness for work, these figures highlight the practical effect of the New York penalty.

Whatever may be said as to the unconstitutionality of New York's procedure, see *Aguayo* v. *Richardson,* —— F.2d —— (2d Cir. No. 72-2195, Jan. 18, 1972), *Jimerson* v. *New York State Department of Social Services,* appeal pending in this Court, O.T. 1972, No. 72-5939, surely Congress did not intend to authorize the termination from AFDC under such procedures when it carefully established a detailed structure for use in work-related termination proceedings. Congress clearly manifested a recognition that since forced work requirements imposed significant burdens and hardships on AFDC families, such requirements were justified only when administered under the fairest of procedures.

Finally, any comparison of New York's requirements and those imposed under the WIN program would be in-

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e.g., *Nelson* v. *Sugarman,* No. 71 Civ. 1719 (S.D.N.Y. Nov. 15, 1972), holding that New York substantially fails to comply with HEW's rule that fair hearings be decided within 60 days of the request, and HEW, DOL, NYSDSS, NYSDOL, *Study of Public Assistance Employables,* March 1972, at p. 20, where it is noted that of the persons claiming to be misclassified as employable as of November 1971 under §131.4, two-thirds had still not had their claims adjudicated in January. The same study revealed that of the remaining one-third who did receive hearings, 61% were found to have been improperly classified. *Ibid.*

complete without a reference to the check pick-up requirement. Under New York's program, all AFDC recipients classified as "employable" are required to report to an office of the State Employment Service every two weeks to receive their assistance checks for the upcoming grant period. 18 NYCRR §385.2. All other AFDC recipients not so classified continue receiving their grants by U.S. mail delivery which, since 1947, HEW and its predecessor have stated provides the "safest and most economical method of getting checks to recipients at the proper time." HEW *Handbook of Public Assistance Administration*, Pt. IV, §5254 (1947). Thus, under the guise of a "work requirement" New York has imposed a personally burdensome and financially injurious condition on the receipt of AFDC which under no stretch of the imagination may be said to have been contemplated by Congress.

Attention should initially be placed on the overwhelming burden which the check pick-up places on the typical AFDC recipient. The pick-up date is scheduled randomly under New York procedures, solely with reference to AFDC case numbers, and is applied inflexibly. Stipulation No. 96, Appendix, p. 189. The reasons any individual may be unable to appear at a particular place at a particular time are too obvious for extended discussion. Suffice to say that they range from reasons of personal convenience (*i.e.*, prior appointment) to unpredictable emergencies (*i.e.*, illness). We, as lawyers, have often experienced this problem when unforeseen circumstances prevent us from appearing in court as scheduled.[23]

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[23] Imagine a case being automatically dismissed, because an attorney is too ill to appear!

The inability of a welfare recipient to report to SES at the designated time without fail is even more predictable and is endemic to assistance programs. The likelihood of sudden illnesses of adult or child is intensified by the high rate of chronic illness and general poor health in the recipient population. There is also the problem of child-care arrangements which suddenly fall through, or lack of transportation because of weather conditions. It is just a fact of life on assistance that one lacks the ability to respond readily to changes in circumstances and to make alternative arrangements. Moreover, it is a given in welfare programs that many families will run out of money before the end of the grant period, or at least have to drastically curtail their food in the last few days of the period, because the grant simply cannot be stretched to provide even subsistence adequacy for the full period. This is particularly so where the state is paying less than its own definition of full need as is New York. N.Y. Soc. Serv. L. §131-a. To expect such a family to have the wherewithal to meet transportation costs or baby-sitter charges on the check pick-up day is ludicrous.[24]

The result of a failure to appear at the scheduled time, however, is disastrous. Even assuming such failure is eventually justified as having been with "good cause," thus

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[24] In a study of operations in New York City conducted during the summer when only HR recipients were covered by the check pick-up (July 12-August 31, 1971), the Community Council of Greater New York found that 45% of those who reported to SES had had problems getting there. Their reasons included lack of money (40.8%), illness or physical handicap (26.5%), difficulty in arranging child care (7.8%). The relatively low incidence of child-care problems at that time is explainable by the fact that only childless individuals or parents in intact families were required to report at that time. It is obviously much higher when heads of one-parent families are required to report.

averting official termination of the AFDC case, a failure to appear quite simply means the family is without funds since reporting to SES is tied to the delivery of the assistance check. Public assistance is a current needs program and grants are made to cover needs which exist at the time payment is received. For example, the grant which a family is due to receive on the 16th of the month is calculated to meet their needs from the 16th through the 30th or 31st; the grant which they received on the 1st calendar day was supposed to provide for their needs from the 1st through the 15th. For those in "brutal need," *Goldberg* v. *Kelly*, 397 U.S. 254, 261 (1970), there is no such thing as dipping into savings when their check is delayed,[25] and since no one else can go in her stead, and since there is no procedure by which the recipient can arrange to have the check promptly delivered to her home, the deprivation is certain and immediate.

Moreover, the loss is not a brief one. Checks not picked up at SES must be returned after one day to the welfare agency, Stipulation No. 101, Appendix, p. 190, and retained at the agency until "appropriate action is taken to release or cancel them," Appendix, p. 75, and that agency must begin "required action" to terminate or reduce assistance. *Ibid.* Thus in these cases the AFDC recipient must appear *personally* at the welfare center to obtain release of the check or wait for the mailing of the check which will not be

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[25] A family cannot become eligible for AFDC if it has savings in excess of $500 per adult (allowed as a burial reserve). 18 NYCRR §§352.22, 352.23. They cannot accumulate savings after coming on the rolls unless they are able to save some money out of the grant, since any outside income or monies received are considered available to meet needs and the grant is accordingly reduced. 42 U.S.C. §602(a)(7).

done until the welfare agency receives her request for a hearing, a procedure guaranteed to insure delay.

The only conceivable justification for the check pick-up requirement is as a "club" to force recipients to appear at SES for scheduled interviews. *Amici* contend that the simple answer to such a contention lies in the *federal* procedure used to compel compliance with the mandatory reporting requirements in WIN, and indeed, the one used by the state to enforce *all other* eligibility conditions. The simple establishment of a requirement that one report for manpower services, as scheduled, in order to continue eligible for aid, divorced from the physical delivery of the assistance grant, achieves its purpose. See, e.g., 29 C.F.R. §56.5(b); DOL Manpower Administration Manual, Work Incentive Program Handbook, §9360(4) (1972). Those who fail to comply without justification lose benefits, and those who fail to comply for a valid reason continue receiving their benefits *when due*. Apart from the constitutional implications in the effective suspension of assistance inherent in the pick-up requirement, cf. *Goldberg* v. *Kelly, supra,* surely the rule in no way furthers a legitimate work eligibility requirement.

Finally, even for recipients who manage to appear at SES when scheduled, and who find their checks waiting for them,[25] the burden of bi-monthly reporting imposes a considerable financial injury. Appellants concede that no funds have been provided by the state to meet the transportation and child care expense necessitated by the re-

[25] The above cited federal/state study noted "significant procedural" errors such as misrouting of checks to the wrong office of SES. HEW, DOL, NYSDSS, NYSDOL, *Study of Public Assistance Employables*, March 1972, p. 11.

porting requirement, Stipulation No. 105, Appendix, p. 191, that welfare budgeting for the "employables" is "on the same basis" as those not required to report, Stipulation No. 97, Appendix, p. 189, and that lack of funds to travel to SES is not "good cause" for failing to report, Stipulation No. 122, Appendix, p. 196. Bi-monthly reporting thus guarantees reduced purchasing power, already exacerbated by the state's decision to meet only 90% of basic needs, calculated at 1968 prices. N.Y. Soc. Serv. L. §131-a. See *Rosado* v. *Wyman*, 322 F. Supp. 1173 (E.D.N.Y.), *aff'd*, 437 F.2d 619 (2d Cir. 1970), *aff'd*, 402 U.S. 991 (1971).[27] See, e.g., Complaint, Appendix pp. 26-29.

Amici urge the court to recognize that the sanctioning of non-WIN "work rules" would authorize more than an exclusion from AFDC for those unwilling to accept non-WIN work assignments. It would also condone the imposition of a variety of related requirements (such as the check pick-up) which the Congress has not determined to be necessary to accomplish its goal of maximizing employment for AFDC recipients, and which run contrary to the fundamental purpose of AFDC itself, the relief of financial need. The description of the check pick-up operation in New York is only illustrative of how state non-WIN work requirements might be implemented.[28]

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[27] The addition of 18 NYCRR §385.5, providing that in certain "hardship" cases reporting to SES will not be required, does not ameliorate the problem since costs are not provided for those who do not meet the physical hardship tests (which are themselves quite subjective).

[28] Another example would be the requirement imposed by New York that an AFDC mother make "diligent" efforts to find day care, N.Y. Soc. Serv. L. §131.4, interpreted by the welfare department to require evidence of a denial of child care by *five* separate providers, such searches being conducted at the *mother's* expense, and while she has her small children to care for.

In sum, then, the New York work rules run completely contrary to the thrust of the 1967 and 1971 WIN amendments—the establishment of nationally uniform, carefully delineated protections and procedures which were to be utilized prior to mandating the acceptance of work by AFDC recipients. The departure from its 1935 purpose to permit AFDC mothers to remain at home full-time to care for their children was to be countenanced only within the parameters of the WIN program in which the twin goals of maximum self-support and continuing parental protection could *both* be achieved. Appellants, rather than offer the Court any countervailing congressional purpose as evidenced in committee reports, debates, or statutory language, merely tout the wisdom and allegedly beneficent purposes of the New York eligibility rules, and complain that they have been thwarted in their objectives by the failures of the WIN program. Appellants conclude, relying on "the inadequacy [as they view the situation] of the WIN program as a comprehensive program of job placement of welfare recipients," that "the Federal program was not intended to be preemptive" (Br. 38).

As a matter of statutory construction, it is difficult to understand how purported inadequacies in the WIN program revealed *subsequent* to its enactment are demonstrative of *prior* congressional intent. First, appellants' assertion ignores the 30 plus years of congressional intent to prohibit compulsory work referrals (except in AFDC-U and §409) prior to the enactment of WIN, as it must, since the "inadequacy" of WIN is relevant only if we assume Congress has *always* authorized state work rules and that WIN was merely an add-on. As extensively discussed above, this is not the case. Second, when Congress sent

H.R. 12080 to the President in 1967, it believed WIN would be quite adequate to the job.

Thus, while it is true that the Secretary of Labor was directed to establish a WIN program only in those areas "in which he determines there is a significant number" of recipients over age 16, 42 U.S.C. §632, a fact of which both the State and County appellants vigorously complain, the Secretary was also directed to "use his best efforts to provide such programs either within [non-WIN areas] . . . or through the provision of transportation . . . to [WIN areas] . . ." *Ibid.* As a consequence the Finance Committee "anticipated that virtually all individuals who are referred to the Secretary of Labor by the welfare agencies will participate in the program." S. Rep. No. 744, *supra*, at 148. Congress, then, expected full participation in WIN. It is worth noting that WIN operates in areas of New York which comprise 93% of the AFDC cases in the state.[39] In any case, having determined that the experience with AFDC-U and §409 counseled heavily in favor of a federal manpower services program run by the Department of Labor, it was not unreasonable to restrict WIN to areas in which the provision of such services was feasible, and to prohibit work requirements in other areas where they were not available.

Secondly, New York is not alone in the view that WIN as enacted in 1968 had some shortcomings. Congress' re-

[39] WIN operates in the five counties of New York City, and in the counties of Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Suffolk, Westchester, Albany, Rensselaer, and Schenectady. The recipient population of these counties and of the State was obtained by using figures supplied by New York for October 1972 in NYSDSS, *Social Statistics*, vol. XXXIV, No. 10, Table 6, February 1973.

structuring of the program in 1971 (Talmadge) was an indication, however, that it had not abandoned WIN as *the* vehicle for compulsory work requirements. Instead, Congress increased federal matching for supportive social services, 42 U.S.C. §603(d)(1), as amended by Pub. L. 92-223, §3(a)(9), mandated that at least 33⅓% of total expenditures under WIN go for on-the-job training and public service employment, 42 U.S.C. §631(b), as amended by Pub. L. 92-223, §3(b)(2), and directed a closer coordination of training with the job market, 42 U.S.C. §633(b)(2), as amended by Pub. L. 92-223, §3(b)(4)(B), all of which measures emphasize direct job placement as rapidly as possible. By so doing, Congress has greatly expanded the capacity of the WIN program to service potentially employable AFDC recipients, but it has *not* chosen to authorize state welfare agencies to impose their own programs on AFDC recipients if they are unhappy with WIN.

Thus, the President's proposed FY 1974 budget reveals that the number of recipients expected to be placed in jobs by WIN in 1973 is 150,000, and in 1974 is 165,000, compared to 42,100 actual placements in 1972. The Budget of the United States Government, Fiscal Year 1974, Appendix p. 444.[30] The President's budget anticipates that half of these job placements will be made *directly*, without training, thus revealing the expanded capacity of WIN. *Ibid.* This expansion of WIN is reflected in New York's WIN contract, entered into between the U.S. Department of Labor Manpower Administration and the New York State Department

[30] This increase is all the more noteworthy because of the fact hat the President's veto and Congress' failure to reenact an appro-riation for the Department of Labor in 1973 has required WIN o be operated pursuant to a continuing resolution, resulting in a educed budget request for 1973-74. *Id.* at 1078.

of Labor, Division of Employment, No. 2602-36, modification number 3, November 1972. Thus, whereas New York contracted to serve 28,909 participants in FY 1972 (pre-Talmadge),[31] its current FY 1973 contract calls for an estimated 90,525 participants. *Id.* at 4 (New York has registered only one-half to two-thirds of that number as of January 31, 1973). As far as funding, New York has contracted for over $32 million in federal funds for FY 1973 and, despite the continuing resolution, almost half has been obligated by January 31, 1973. *Ibid.*

Finally, although we doubt the relevancy of their argument, a closer look at New York's statistical comparison of the work rules and WIN is enlightening. Thus, at page 17 of their brief, the state appellants claim 125,000 "referrals" under the state work program, comparing that to 9,600 "opportunities for enrollment" in WIN in fiscal 1971. First, the state "referrals" figure includes Home Relief recipients,[32] mostly single men under age 64, which probably accounts for more than 60% of the total "referrals." HEW, DOL, NYSDSS, NYSDOL, *Study of Public Assistance Employables,* March 1972, p. 17. Second, "referrals" *do not mean jobs,* as the state admits at page 14—it means check pick-up. Third, the WIN "enrollment" figure (assuming its accuracy) is two years old, and pre-Talmadge, see *supra,* at 56-57, and even so, represented *actual* job or training slots, not merely a "referral" to SES.

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[31] FY 1972 figures appear at Contract No. 2602-36, "Proposal/Application for a WIN Program" (effective January 1, 1972), page I-1).

[32] Home relief is New York's general assistance program funded entirely with state and local funds, and is available to needy persons who do not meet the eligibility requirements for one of the federal categorical programs.

And what of the job placements claimed (at page 18) from January to June 1972 (5,323 statewide)? These too include Home Relief recipients, clearly more employable than WIN registrants who must satisfy their family responsibilities before being placed in a job. Furthermore, perhaps the most glaring omission in New York's analysis is its failure to discuss the significant inability of recipients placed under §131.4 to *retain* their jobs. Thus, the federal/state study revealed that of those AFDC recipients placed in jobs in September 1971, only slightly more than one-third were still employed in November, more than half were unemployed within five weeks of placement, and 27% were out of work within one week! HEW, DOL, NYSDSS, NYSDOL, *Study of Public Assistance Employables*, March 1972, p. 40. The major reasons for layoffs (representing approximately two-thirds of those unemployed in November, *id.* at 42), were lack of continued availability of work, lack of skill, illness and absenteeism. *Id.* at 39.

Such figures speak eloquently in favor of the approach taken by Congress in WIN. Referrals to jobs must follow the provision of necessary supportive services to enable such referrals to be anything more than a charade and a harassment. If New York is proud that it can get recipients to work more quickly than the Department of Labor's WIN program, perhaps it should consider why that is true (if in fact, it is). We submit that New York is able to make its claim simply because it has chosen to refer AFDC mothers to jobs for which they are untrained, and which they are unprepared to take because of their need for supportive services which are not provided by the state. The Court should not interpret congressional intent to favor such a program in the face of the considerable care Congress has taken to avoid that very result.

Conclusion

The judgment below, insofar as it enjoins the appellants from denying AFDC to individuals who fail to comply with the New York work rules, should be affirmed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1972

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, *et al.*,

Appellants,

v.

DOLORES DUBLINO, *et al.*,

Appellees,

No. 72-802

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES, *et al.*,

Appellants,

v.

DOLORES DUBLINO, *et al.*,

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1972

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, *et al.*,

Appellants,

v.

DOLORES DUBLINO, *et al.*,

Appellees,

No. 72-802

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES, *et al.*,

Appellants,

v.

DOLORES DUBLINO, *et al.*,

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF OF APPELLEES

OPINION BELOW

The opinion below is reported at 348 F. Supp. 290 (W.D.N.Y. 1972).

JURISDICTION

In setting this case for argument, this Court postponed the question of jurisdiction. ___ U.S. ___, 41 U.S.L.W. 3391 (January 15, 1972). Appellees (hereafter "Plaintiffs") agree with the State Defendants that the Court has jurisdiction of this Appeal under 28 U.S.C. §1253, providing for direct appeal from decisions of three-judge courts properly convened pursuant to 28 U.S.C. §2281. See Brief of State Defendants at 2-4. This is so where, as in this case, the decision appealed from is based on a statutory claim joined with a constitutional claim which merited the convening of the three-judge Court. See *Rosado v. Wyman*, 397 U.S. 397, 402-3 (1970); *United States v. Georgia Public Service Commission*, 371 U.S. 285, 287-88 (1963); *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73 (1960).

Plaintiffs prevailed on their constitutional claims insofar as those claims were based on the right to notice of hearing. See 348 F. Supp. at 299. The three-judge court below was properly convened and this Court has jurisdiction of the appeal pursuant to 28 U.S.C. §1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The text of Article VI, clause 2 of the Constitution of the United States (the "Supremacy Clause") is set out in the Appendix to this brief.

New York Social Services Law §§131(4) (as amended by Chapters 102 and 298 §5 of the N.Y. Laws of 1971) and 350-k are set forth in the Brief for Appellants New York State Departments of Social Services and Labor and their Commissioners at pages 4-6 and A-3 through A-5 respectively.

During the course of this action and prior to the opinion and judgment below, N.Y. Soc. Serv. L. §131(4) was amended on three occasions. The text of N.Y. Soc. Serv. L. §131(4) as amended by Chapters 683, §1, 685, §1 and 941, §1 of the N.Y. Laws of 1972 is set out in the Appendix to this brief.

The following statutory provisions are also pertinent to a consideration of this case and are set out in the Appendix to this brief: Social Security Act §402(a)(10), 42 U.S.C. §602(a)(10); Social Security Act §§402(a)(19), 430 *et seq.*, as amended by Pub. L. 92-223, 85 Stat. 802, 42 U.S.C.A. §§602(a)(19), 630 *et seq.*; N.Y. Soc. Serv. L. §350-e, as amended by Chap. 941, §4, N.Y. Laws of 1972.

COUNTERSTATEMENT OF THE CASE

A. Introduction

On July 1, 1972, Plaintiffs, all recipients of public assistance in the State of New York, commenced this action against the New York State Department of Social Services (hereafter "DSS"), George K. Wyman, Commissioner of DSS,[1] New York State Department of Labor (hereafter "NYDOL"), Louis L. Levine, Industrial Commissioner (Appellants DSS, Lavine, NYDOL and Levine will hereafter be referred to as the "State Defendants"), Erie County Department of Social Services and its Commissioner George G. Sipprell,[2] to enjoin the implementation against them and others similarly situated of

[1]During the pendency of this action, George K. Wyman was succeeded in office by Abe Lavine.

[2]Onondaga County Department of Social Services and its Commissioner, John L. Lascaris, intervened as Defendants (hereafter referred to as the "Onondaga Defendants").

N.Y. Soc. Serv. L. §§131(4), 164, and 350-k (as amended by Chapters 101, 102 and 298, §5 of the New York Laws of 1971), and for declaratory relief. Jurisdiction of the District Court was invoked pursuant to 28 U.S.C. §1343. The claims of Plaintiffs were based on Article VI and the Thirteenth and Fourteenth Amendments to the United States Constitution, the Social Security Act and 42 U.S.C. §1983. The District Court held that Plaintiffs were entitled to relief from enforcement of the New York Rules against those members of the class who are applicants for or recipients of Aid to Families with Dependent Children, including the Unemployed Parent Category, and that other members of the class were entitled to notice of their hearing rights. The court declined to hold for Plaintiffs on other points.[3]

B. Statutory and Administrative Framework

1. *Aid to Families with Dependent Children and the Work Incentive Program*

Each state provides financial assistance to needy dependent children under the federal Aid to Families with Dependent Children ("AFDC") program. See *King v. Smith*, 392 U.S. 309, 311 (1968); 42 U.S.C. §§601 *et seq.* For the family unit to receive AFDC, the child must satisfy two basic federal requirements. The child must be: (1) needy, according to a standard of need established by the state and (2) deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of one parent, and living with a parent or other statutorily specified relative. 42

[3]Plaintiffs have appealed from the aspects of that decision that denied the requested relief. See No. 72-5939.

U.S.C. §606. In New York this program is designated "ADC."

Some states, including New York, participate in the federal Aid to Families with Dependent Children-Unemployed Parent Program ("AFDC-U"),[4] for which a needy child is eligible if deprived of parental support by reason of the unemployment of the father. See 42 U.S.C. §607(a). In New York this program is designated "ADC-U."

A major portion of the cost of both programs is reimbursed by the Federal Government if the state has a plan for distributing such grants which meets the standards established by the Social Security Act. The other conditions of eligibility for the two programs are set forth in the Social Security Act. See 42 U.S.C. §602(a). The Social Security Act provides that "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. §602(a)(10).

In 1967, the Social Security Act was amended to provide that states participating in AFDC, or AFDC and AFDC-U, programs were required to include the Work Incentive Program ("WIN") in their state plans. 42 U.S.C. §§602(a)(19), 630 *et seq.* In 1971 the Social Security Act was again amended and WIN was made more comprehensive. Act of Dec. 14, 1971, Pub. L. 92-223, 85 Stat. 802 (hereafter referred to as "the 1971 Amendments").[5] The purpose of WIN, as expressed in the

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[4]Together, AFDC and AFDC-U will be hereafter referred to as "AFDC."

[5]The 1971 Amendments do not yet appear in the U.S. Code, but do appear in the 1973 Supplement to the U.S. Code Annotated ("U.S.C.A."). Consequently, all citations to the current provisions of WIN will be to sections of the U.S. Code Annotated as modified

statute, is to help the AFDC recipient acquire a "sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society." 42 U.S.C.A. §630. As the result of the 1971 Amendments all state plans must provide for the registration for pre-WIN services of all recipients not excluded by the Act [42 U.S.C.A. §602(a)(19)(A)] and for certification to WIN of all those ready for WIN [42 U.S.C.A. §602 (a)(19)(G)(ii)].

The United States Department of Labor ("USDOL")[6] evaluates each recipient registered to determine what services the recipient requires and to determine whether such recipient is ready for certification to WIN, 29 C.F.R. §56.5(b), (c) (37 Fed. Reg. 12206). United States Department of Health, Education and Welfare, Work Incentive Program Handbook (hereafter "HEW Handbook"), §§80.1, 80.4, 80.5.[7] The available services must include health, vocational rehabilitation, counseling, child care and other social and supportive services. 42 U.S.C.A.

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by the 1973 Supplement. Citations to other sections of the Social Security Act or to the provisions of WIN as originally enacted in 1967 will be to the U.S. Code.

[6] In most instances USDOL delegates its functions to its local state employment services which discharge those functions pursuant to regulations and instructions of USDOL. See United States Department of Labor, Manpower Administration Manual, Title 93, "Work Incentive Program Handbook" June, 1972 (hereafter "USDOL Handbook") §9353(2)(b). The version of this Handbook which appears as Exhibit 46 in the Record was revised to reflect the 1971 Amendments to WIN in June, 1972. Citations are to the revised version.

[7] The version of the HEW Handbook which appears as Exhibit 45 in the Record was revised to reflect the 1971 Amendments to WIN in September, 1972. Citations are to the revised version.

§602(a)(19)(G). Such services are provided by a "separate administrative unit" of the state department of social services ("DSS"). After the required services have been provided, the unit certifies the registrant to the USDOL as ready for WIN. See 42 U.S.C.A. §602(a)(19)(G).

Once certification occurs, WIN makes three types of work and training available: (1) employment in the regular economy; (2) training for work in the regular economy; and (3) publicly-financed "public service employment." 42 U.S.C.A. §§630, 633. An independent evaluation of the training and employment needs of each individual is required prior to placement in one of the categories. Exempted from registration for pre-WIN services are the following:

"(i) a child who is under age 16 or attending school full time;

"(ii) a person who is ill, incapacitated, or of advanced age;

"(iii) a person so remote from a work incentive project that his effective participation is precluded;

"(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

"(v) a mother or other relative of a child under the age of six who is caring for the child; or

"(vi) the mother or other female caretaker of a child, if the father or another adult male relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph)..." 42 U.S.C.A. §602(a)(19)(A).

These recipients are excluded from compulsory work because only registered recipients are certified [42 U.S.C.A. §602(a)(19)(G)] and only certified recipients are subjected to sanctions for refusal to participate [42 U.S.C. §602(a)(19)(F)].

Once the pre-WIN services have prepared the eligible recipient for WIN, the recipient *must* be certified to WIN. 42 U.S.C.A. §602(a)(19)(G). States are penalized by a reduction of federal assistance for failure to certify to the Secretary of Labor as being ready for WIN at least 15% of the average number of those registered each year. 42 U.S.C.A. §603(c).

The 1971 Amendments established the following priorities for the registration of WIN participants:

> "... first, unemployed fathers; second, mothers, whether or not required to register pursuant to section 602(a)(19)(A) of this title, who volunteer for participation under a work incentive program; third, other mothers, and pregnant women, registered pursuant to section 602(a)(19)(A) of this title, who are under 19 years of age; fourth, dependent children and relatives who have attained age 16 and who are not in school or engaged in work or manpower training; and fifth, all other individuals so certified to him." 42 U.S.C.A. §633(a).

These priorities were enacted, in part, to protect even registered mothers from compulsory certification until other categories had been certified. See Statement of Sen. Talmadge, 117 Cong. Rec. 20569 (Dec. 4, 1971). Similar priorities had been established by regulation prior to the 1971 Amendments. See 45 C.F.R. §220.35(a)(3) (1971 ed).

Even after certification, WIN provides for monetary training and work incentives [42 U.S.C.A. §634], provides increased grants to reflect increased expenses

incident to employment [42 U.S.C.A. §602(a)(19)(D)], and establishes orientation, basic education, training and counseling services for participants [42 U.S.C.A. §633(d)]. To insure that training will lead to meaningful jobs, the Secretary of Labor is required to establish regional "Labor Market Advisory Councils" to assess manpower needs, and training must be related to those needs. 42 U.S.C.A. §632(f).[8]

Congress established a number of procedural devices to protect applicants and recipients from erroneous imposition of WIN sanctions. A recipient is entitled to a fair hearing on whether he or she should be required to register for pre-WIN services. See 29 C.F.R. §57.1 (37 Fed. Reg. 14268); 45 C.F.R. §205.10. A second hearing on the issue of "good cause" for refusal to accept employment or training or otherwise participate after certification to WIN is also required. This hearing is provided by USDOL according to standards it has set. 42 U.S.C.A. §633(g); 29 C.F.R. §§57.0 *et seq.* (37 Fed. Reg. 14268). Even after a finding that there was not good cause, a recipient may avoid termination of AFDC assistance by accepting counseling for a period of sixty days [42 U.S.C.A. §602(a)(19)(F)], and in any case assistance is only suspended "if and for so long as" the recipient refuses to participate [42 U.S.C.A. §602(a)(19)(F)].

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[8]Congress in 1971 also sought to strengthen WIN by creating a special tax incentive for private employers who employ WIN participants. Revenue Act of 1971, Pub. L. 92-178, 85 Stat. 497, 26 U.S.C.A. (I.R.C. 1954) §§40, 50A, 50B (1973 Supp.).

2. *The New York Work Rules*

On July 1, 1971, chapters 101, 102 and 298, §5 of the New York Laws of 1971 became effective. Chapters 102 and 298, §5 amended N.Y. Soc. Serv. L. §131(4):

(1) to provide that "no assistance or care" shall be provided to any "employable" recipient of public assistance who fails "to accept employment in which he is able to engage";

(2) to establish a presumption of employability, every recipient to be considered "employable" unless rendered unable to work by mental or physical incapacity, advanced age, full-time participation in school (for minors), full-time participation in "approved" vocational training, or the need to provide full-time care for other members, including children, of the recipient's household for which such care is not otherwise available notwithstanding "diligent efforts" by the recipient and the social services department to locate such care;

(3) to require employable recipients, and recipients enrolled in "approved" vocational training programs (hereafter, "vocational trainee unemployables") to report in person to the Division of Employment (State Employment Service, hereafter "SES") of NYDOL, to obtain public assistance payments;

(4) to require employable recipients to obtain "at least semi-monthly" a certificate from SES stating that no employment in which they are able to engage is available;

(5) to include those participating in public works projects established pursuant to N.Y. Soc. Serv. L. §§164 and 350-k in the category of "unemployed employable recipients."

Chapter 101, §2 created a new section of the Social Services Law §350-k, which

(1) mandated the establishment of public works projects for employable recipients of AFDC;

(2) required the assignment of employable recipients of AFDC to such public works projects, to work in return for their assistance; and

(3) provided that recipients who refused to report to or satisfactorily participate in public works projects would be ineligible for AFDC.[9]

During the course of this action, several changes were made in the New York Work Rules by the state legislature. Thus Chapter 683, §1, N.Y. Laws of 1972 amended §131(4) to delete the requirement that vocational trainee unemployables report to SES to pick up checks. Chapter 685, §1, N.Y. Laws of 1972 amended §131(4) to provide for monthly payment of the shelter allowance portion of the grant. Chapter 941, §1, N.Y. Laws of 1972 amended §131(4) to provide that applicants for and recipients of AFDC be deemed employable "in accordance with the provisions of [N.Y. Soc. Serv. L.] §350-e" (which describes those the State requires to register for WIN) except that the requirements of §131(4) continue to apply to applicants for or recipients of AFDC "until such time as they are enrolled and participating in the Work Incentive Program."[10]

[9]Chapter 101 also amended N.Y. Soc. Serv. L. §164 to mandate creation of similar public works projects for recipients of public assistance other than AFDC recipients. N.Y. Soc. Serv. L. §§131(4), 164 and 350-k were referred to collectively below as the "New York Work Rules." This appeal is concerned only with the decision of the court below insofar as it enjoined application of the New York Work Rules to those members of the Plaintiff class who were recipients of AFDC. Therefore, Plaintiffs will hereafter refer to N.Y. Soc. Serv. L. §§131(4) and 350-k (the only sections pertinent to this appeal) as the "New York Work Rules."

[10]These provisions have not been implemented. See fn. 16, *infra* at pages 20-21.

Immediately prior to the filing of this action, and during the year between filing and judgment, the Defendants acted to implement the New York Work Rules. By a series of Administrative Letters to local social services agencies, DSS required them to examine case files in order to prepare a roster of employables [Administrative Letter 71 PWD-34 (May 13, 1971), A. 50],[11] created procedures and forms for referral of employables to SES and imposed extensive reporting requirements on local agencies [Administrative Letter 71 PWD-43 (June 9, 1971), A. 53]. Although DSS issued procedural directives for creation of public works projects for Home Relief recipients, no steps were taken to enforce the new §350-k.[12] By Bulletin Transmittal 71 MB-49, DSS transmitted to the local welfare departments amended regulations to implement the New York Work Rules, codified as 18 NYCRR §§385.1 *et seq.* (A. 117).[13]

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[11] Numbers in parentheses preceded by "A." refer to pages of the Appendix.

[12] DSS took no steps to implement §350-k, apparently because the United States Department of Health, Education and Welfare (hereafter, "HEW") by letter dated April 28, 1971 (Ex. 16) had indicated that such projects were not in conformity with federal requirements and would not be reimbursed. See opinion below, 348 F. Supp. at 295 n. 7.

[13] NYDOL promulgated internal regulations governing those aspects of the New York Work Rules administered by SES. See II NYSES Bureau of Procedure Manual §§17090 *et seq.* (attached as Exhibit to Answer of NYDOL and Levine to Plaintiffs' Interrogatories). DSS issued several other Administrative Letters concerning the New York Work Rules, all of which dealt with details of implementation. The basic policy pronouncements, however, are contained in DSS Administrative Letters 71 PWD-34 and 43 and in the regulations.

3. *Application of the New York Work Rules*

Application of the New York Work Rules to AFDC recipients resulted in many hardships. First, the requirement that recipients report to SES offices to obtain their checks, on pain of ineligibility for assistance for 30 days, erected a condition of eligibility which was often difficult if not impossible to satisfy. But for the issuance of temporary restraining orders, Virginia Michael, Clara Bornatimer, Charlotte Jimerson and Billy White would have been required to travel 22, 22, 18 and 30 miles, respectively, to receive their checks (Stipulations of Fact ["Stips."] ¶¶34, 47, 57 and 75). (Paragraphs of the Stipulations of Fact cited herein are set out beginning at A. 150.) Recipients such as Clara Bornatimer and Betty Glenn were told to report to SES even though there was no public transportation available (see Stips. ¶¶47 and 55). All recipients were required to pay the cost of their transportation which in the less densely populated areas could be substantial (see Stips. ¶ 105; A. 250). Yet lack of funds to meet such costs was not good cause for failure to report to SES (Stips, ¶ 122).

Recipients of AFDC with numerous children and no child care arrangements were classified employable and required to comply with the Work Rules (see, *e.g.*, Stips. ¶¶31, 32, 34, 35, 50, 55, 60, 82).

Recipients found employable were placed in a dilemma: they were forced to decide either to comply, often at great hardship, or not to comply and risk, if non-compliance were eventually found to be without good cause, a mandatory penalty of denial of assistance for thirty days (Stips. ¶ 119).

Until the Work Rules were amended,[14] the requirement that vocational trainee unemployables report to

[14] See *supra* p. 11.

SES resulted in disruption of studies and class attendance for those AFDC recipients enrolled in WIN and other training programs (see Stips. ¶¶31, 38, 48, 61). Moreover, the Work Rules were applied against recipients enrolled in educational programs which were not "approved" pursuant to the Work Rules, especially four year college programs (whether in liberal arts or leading to a specific vocational degree)(See Stips. ¶¶65, 72, 79, 80).[15] They often forced a choice between accepting any proferred employment or losing assistance.

SUMMARY OF ARGUMENT

The court below concluded that enforcement of the New York Work Rules must be enjoined because Congress has preempted state action in the area of compulsory work for recipients of AFDC and because those Rules imposed an additional condition of eligibility on such recipients in violation of 42 U.S.C. §602(a)(10). The court was correct on both grounds because:

(1) The New York Work Rules conflict with the federal WIN program in that they prevent the participation in WIN of those of whom Congress required participation, they apply to AFDC recipients whom Congress exempted from compulsory work requirements and they lead to benefit terminations through procedures other than those established by Congress. See *e.g. Perez v. Campbell*, 402 U.S. 637 (1971).

(2) Congress has acted to the exclusion of the states by adopting a comprehensive compulsory work program that applies to all AFDC recipients.

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[15] For instance, AFDC recipient Henrietta Smith, a college student studying education of the mentally retarded, was sent to a job as a "go-go" girl (see Stips. ¶72).

See *e.g., Graham v. Richardson*, 403 U.S. 365 (1971); *Pennsylvania v. Nelson*, 350 U.S. 497 (1956); *Charleston and Western Carolina R. Co. v. Varnville Furniture Co.*, 237 U.S. 597 (1915).

(3) The New York Work Rules violate 42 U.S.C. §602(a)(10) by imposing numerous conditions of eligibility (including requirements that recipients report to SES offices to pick up assistance checks, accept any employment they are capable of performing, make diligent efforts to obtain child care and, if found out of compliance, discharge a 30-day penalty before eligibility can be reestablished) on AFDC recipients beyond those imposed by the Social Security Act. See *e.g., Carleson v. Remillard*, 406 U.S. 598 (1972).

ARGUMENT

I.

THE NEW YORK WORK RULES ARE INVALID BECAUSE THEY CONFLICT WITH AND FRUSTRATE THE FEDERAL WORK INCENTIVE PROGRAM.

This Court has consistently adhered to the principle that the states must conform their Social Security Act programs to the requirements of the Act. See *Carleson v. Remillard*, 406 U.S. 598 (1972); *Townsend v. Swank*, 404 U.S. 282 (1971); *California Department of Human Resources Development v. Java*, 402 U.S. 121 (1971); *Rosado v. Wyman*, 397 U.S. 397 (1970); *King v. Smith*, 392 U.S. 309 (1968). Under that Act Congress has established WIN as the sole compulsory work and training program for AFDC recipients. New York has required that these same recipients accept referrals to work under a program which does not conform with the Act and, in

fact, directly conflicts with it. The court below assessed numerous conflicts between WIN and the New York Work Rules and correctly concluded that those Rules must yield to paramount federal law.

The first of the conflicts between the New York Work Rules and WIN results from the interference of the Work Rules with the comprehensive program which Congress has established to help the AFDC recipient achieve employability. Interference results because individuals registered for WIN, as they are required to be by federal law, are subject to the Work Rules and thus are prevented from receiving the services required by the Act, and certification as ready for work or training to WIN. Congress correctly recognized the futility of a program of compulsory work referrals that neglects the real social and manpower service needs of individual recipients of public assistance.

WIN, as enacted in 1967, required the preparation of an "employability plan" for each WIN participant [42 U.S.C. §633(b)], provided for an extensive program of testing, counseling, orientation, basic education, training in communications and employability skills, work experience, institutional training, on-the-job training, job development and special job placement and follow-up services [42 U.S.C. §633(d)], provided that "good cause" for a participant's refusal to accept employment or training be evaluated by the manpower specialists of the Department of Labor [42 U.S.C. §633(g)] and provided for a period of counseling prior to termination of assistance [42 U.S.C. §602(a)(19)(F)]. Through simultaneously enacted provisions Congress also provided child care and family planning services for WIN participants. 42 U.S.C. §602(a)(15)(B)(i).

In the 1971 amendments this comprehensive program was expanded. Even *before* "certification" to WIN a "Separate Administrative Unit" of the state welfare agency must provide services, including health, vocational rehabilitation, counseling, and child care, for registered recipients. 42 U.S.C.A. §602(a)(19)(G). Long before the question of actual "employability" arises, a wide range of services must be provided. The modified WIN enrollment process allows the Department of Labor to use its expertise in assessing the employment potential of registered recipients [42 U.S.C.A. §602 (a)(19)(A)], while the provision mandating the creation of Labor Market Advisory Councils insures training related to labor market needs [42 U.S.C.A. §633(b)(2)].

The New York Work Rules have no similar provisions. When they were enacted, no money was appropriated for training, counseling, child care, transportation or any other employment related services (Stips ¶ 105). Neither the WIN Units established by the Department of Labor in the SES nor the Separate Administrative Unit plays any role in Work Rules implementation. No employability plan is prepared for those subjected to the Work Rules (A. 217). There is no requirement that Work Rules jobs be suited to the individual's experience or training (A. 218). There is only an overriding determination to remove recipients from welfare and put them into any available work. See *infra* at pages 39-40.

Although the Social Security Act, even prior to the 1971 Amendments, required that *every* "appropriate" recipient be referred to WIN, and subsequent to those Amendments has required that all but specified recipients of AFDC register for pre-WIN services, the New York Work Rules apply to these same recipients. The State of New York circumvents the entire WIN scheme by

referring an AFDC recipient, whether or not that recipient should be registered for WIN, to employment, on pain of termination of assistance for 30 days, as long as that recipient is not already enrolled in WIN.

This conflict, implicit in the Work Rules as originally enacted, was made explicit by the 1972 New York legislature when it provided that:

> "Notwithstanding section three hundred fifty-e [the section of the N.Y. Social Services Law which provides for a WIN program] or any other provisions of this chapter, the provisions of this subdivision shall apply to applicants for or recipients of aid to dependent children *until such time as they are enrolled and participating in the Work Incentive Program.*" N.Y. Soc. Serv. L. §131(4), as amended, N.Y. Laws of 1972, Ch. 941 §1 (emphasis supplied).

While the individual recipient registered under WIN is considered only potentially "employable" (registration must be followed by services calculated to render registered recipients ready for employment or training), the same recipient pursuant to the Work Rules is considered presumptively "employable," and can be denied the mandatory WIN services entirely. A few examples of the operation of the conflict suffice:

(1) the referral to work under the Work Rules of a person receiving pre-WIN services conflicts with WIN;

(2) termination of assistance to a person for failure to accept a Work Rules referral while registered for WIN conflicts with WIN;

(3) termination of assistance under the Work Rules to one registered for WIN, for failure to report to SES to pick up the assistance check conflicts with WIN;

(4) termination of assistance to a mother under the Work Rules for failure to make diligent efforts to secure child care while she is registered for WIN (and, perhaps,

not "certified" because of the absence of child care) conflicts with WIN.

A second conflict results from the fact that the New York Work Rules operate to subject to compulsory work certain AFDC recipients whom Congress intended to exempt from such compulsion. By exempting from compulsory referral to WIN certain categories of AFDC recipients, Congress demonstrated its judgment that requiring work would be inappropriate for those recipients. Senator Long, who introduced the WIN legislation in 1967, stated:

> "The Senate committee feels work should not be required as a condition of drawing welfare payments as to certain people." 113 Cong. Rec. 32593 (1967).

The report of the Senate Finance Committee also confirms this intent:

> "To provide guidelines and to clarify the manner in which the program will operate, the committee bill sets forth a number of categories of individuals who would not be considered as 'appropriate' for referral to the Secretary of Labor for the work incentive program. *Persons described in those categories would not be placed in any work situation unless they chose to request employment or training.*" Sen. Rep. No. 744, 90th Cong. 1st Sess., at 2984 (Emphasis supplied).

Those who have been exempt from WIN from its inception, and who continue to be exempt under the 1971 Amendments, include children under age 16 or attending school full time, the ill and incapacitated and those of advanced age, those so remote from a WIN project that effective participation is precluded and those needed in the home because of the illness or incapacity of another member of the household. 42 U.S.C.

§602(a)(19)(A); 42 U.S.C.A. §602(a)(19)(A). Under the 1971 Amendments, additional exemptions were provided: mothers of children under six and other relatives caring for such children are now exempt from the registration requirements [see 42 U.S.C.A. §602(a)(19)(A)(v)] and, hence, from certification to WIN [42 U.S.C.A. §602(a)(19)(G)(ii)] and threat of grant termination [see 42 U.S.C.A. §602(a)(19)(F)]. Likewise mothers and other female caretakers of children in homes in which there is a father or other adult male relative (who is required to register and has not failed to do so and has not refused to participate in WIN without good cause) are now exempt from these requirements. 42 U.S.C.A. §602(a)(19)(A)(vi). Under the New York Work Rules, such mothers have not been exempted (see *e.g.* Stips. ¶¶31, 32, 34, 35, 50, 82). Similarly, the Work Rules exempt mothers caring for children only if a "diligent" search for alternative care is made and exempt only those of the ill and incapacitated whose afflictions prevent them from "performing services." See 18 N.Y.C.R.R. §385.1.[16]

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[16] Amendments to the statutory provisions of the Work Rules adopted, in part, the language of the 1971 Amendments to WIN. N.Y. Laws of 1972, Ch. 941, §1. However, since these provisions have not been implemented it is impossible to know to what extent the definition of "employability" in New York corresponds to the WIN definition of those who must register for pre-WIN services. In view of the fact that the section which alters the definition provides that "notwithstanding" that definition, N.Y. Soc. Serv. L. §131(4) shall still apply to AFDC applicants and recipients until they are "enrolled and participating" in WIN, it seems likely that persons who could not be compelled to participate in WIN could be subjected to the Work Rules. In fact, Defendants continue to assert their right to refer persons not subject to WIN registration. (*E.g.*, though the amendments enacted by the New York legislature in 1972 seem specifically to exempt from the new definition of

This conflict also appears in another guise. After WIN registration occurs, the provision of services and certification to WIN (both of which occur *before* referral to work) are accomplished in accordance with priorities that insure that unemployed fathers and volunteer mothers are certified before other mothers and children. See 42 U.S.C.A. §602(a)(19)(G); §633(a). Since no such priorities obtain under the New York Work Rules, the Rules result in the referral, under compulsion, of those who, in the judgment of Congress, should not be compelled to work so long as fathers and volunteers remain uncertified (See Stips ¶¶31, 32, 34, 35, 50, 82). This aspect of the rules amounts to a virtual repeal of federal legislation.

Finally this conflict is emphasized by the 1971 Amendments to WIN which compel uniform application of the WIN requirements to AFDC recipients. Senator Talmadge, author of these Amendments, stated:

> "Under present law, all 'appropriate' welfare recipients must be referred by the welfare agency to the Labor Department for participation in the work incentive program. Certain categories of persons are statutorily considered inappropriate. Persons may volunteer to participate in the work incentive program even if the State welfare agency finds them inappropriate for mandatory referral.
>
> *"Another criticism of the program has been that the State application of those standards of 'appropriateness' for the program have resulted in widely differing rates of referrals and program participation. My amendment would eliminate this situation with a series of amendments . . . .*
>
> * * * * *

"employable" those persons too remote from a WIN project [see N.Y. Laws of 1972 Ch. 941, §§1, 4], the State Defendants insist that they will refer such persons under the Work Rules. See Brief of State Defendants at 31-32.)

"At least 15 percent of the registrants in each State would be required to be prepared by the welfare agency for training and referred to the work incentive program each year; States failing to meet this percentage would be subject to a decrease in Federal matching funds for aid to families with dependent children . . . . " 117 Cong. Rec. 20569 (Dec. 4, 1971) (Emphasis supplied).

The italicized language is as emphatic a statement as is possible that states are not to be allowed to impede implementation of WIN by altering the federal standards.

A third conflict is found when the procedural safeguards provided by WIN are contrasted with those available under the New York Work Rules. Congress, alert to the possibilities of abuse inherent in programs of compulsory work, surrounded WIN with extensive procedural safeguards. The court below described them thus:

"Like the Work Rules, WIN is 'designed to help families and individuals to become self-supporting rather than dependent upon welfare checks,' see S.Rep. No. 1589, 87th Cong., 2d Sess. 7 (1962), but, unlike the Work Rules, WIN provides more elaborate procedural protections for the public assistance recipient. Under WIN, the recipient is entitled to a hearing, prior to referral, on the issue of appropriateness for referral. See Title 42, United States Code, Section 602(a)(4) and 45 C.F.R. §220.35(a)(15). A second hearing if needed, on the issue of good cause for refusal to accept employment or training after referral to WIN is also required. See Title 42 United States Code, Section 633(g) and 45 C.F.R. §220.35(a)(16). In the event of a finding that good cause is not present, a recipient may delay termination of assistance by accepting counseling for a period of sixty days. See

Title 42, United States Code, Section 602(a)(19)(F)." 348 F. Supp. at 296.[17]

This description of WIN procedural rights highlights three major differences in procedures under the two statutes:

(1) Under the Work Rules the hearing on "employability" can only occur in a fair hearing when the state initiates grant termination proceedings for failure to comply (see Stips. ¶119), or at a fair hearing requested by the recipient if he or she is able to comply and is complying. See affidavit of Barry Van Lare, quoted in 348 F. Supp. at 299. In WIN one is entitled to test the question of whether or not one should be registered, in a hearing not resulting in grant termination, but rather resulting in a decision that the recipient must register.

(2) Under the Work Rules one may assert "good cause" for refusal to accept a job in a fair hearing only after the state has initiated grant termination proceedings for failure to comply (see Stips. ¶¶119, 120). In WIN there is a second hearing on good cause for failure to participate, which again does not result in grant termination if the recipient loses the hearing and then elects to comply. This second hearing is conducted by USDOL.

(3) Under the Work Rules termination of assistance is the immediate consequence of failure to prevail in the

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[17] This discussion cites the statute and regulations prior to the 1971 Amendments. The current provisions for a hearing on the registration requirement are contained in 29 C.F.R. §57.1 (37 Fed. Reg. 14268) and 45 C.F.R. §205.10; the provisions for the hearing still provided by the Department of Labor on the issue of "good cause" for refusal to accept employment or training after certification to WIN are contained in 42 U.S.C.A. §633(g) and 29 C.F.R. §57.0 *et seq.* (37 Fed. Reg. 14268 *et seq.*); the requirement of 60 days of counseling prior to termination of assistance remains in 42 U.S.C.A. §602(a)(19)(F).

hearing (see Stips. ¶120). In WIN, sixty days of counseling, if accepted, precedes termination.

Yet a fourth major procedural difference is found in the fact that the Work Rules impose a penalty of thirty days of benefit ineligibility once a failure to comply is found [see Stips. ¶120; 18 N.Y.C.R.R. §385.7 (formerly §385.6, A. 126)][18] while in WIN ineligibility lasts only so long as there is a failure to comply [see 42 U.S.C.A. §602(a)(19)(F)].

This Court has consistently held that state rules that conflict with the provisions of the Social Security Act must yield. *Carleson v. Remillard*, 406 U.S. 598 (1972); *Townsend v. Swank*, 404 U.S. 282 (1971); *California Department of Human Resources Development v. Java*, 402 U.S. 121 (1971); *Rosado v. Wyman*, 397 U.S. 397 (1970); *King v. Smith*, 392 U.S. 309 (1968). This principle has been applied by three district courts and one Court of Appeals to preclude the enforcement of state work rules against AFDC recipients. See *Woolfolk v. Brown*, 325 F. Supp. 1162 (E.D. Va. 1971), *aff'd per curiam*, 456 F.2d 652 (4th Cir.), *cert. denied*, ___ U.S. ___, 93 S.Ct. 112 (1972);[19] *Bueno v. Juras*, 349 F.

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[18] See *Aguayo v. Richardson*, ___ F.2d ___, Nos. 479, 508 (2d Cir. Jan. 18, 1973), Slip Opinion at 1591-1593, for a discussion of the problems raised by this mandatory penalty.

[19] The decision in *Woolfolk*, which held that conflicts with WIN rendered a state compulsory work rule for AFDC recipients invalid, was filed April 22, 1971. Eight months later Congress enacted the 1971 Amendments and altered WIN extensively to increase its comprehensiveness. See *supra* at page 17. By so doing, it implicitly adopted the *Woolfolk* holding. See *Electric Storage Battery Co. v. Shimadzu*, 307 U.S. 5 (1939); *Missouri v. Ross*, 299 U.S. 72 (1936); *Manhattan Properties v. Irving Trust Co.*, 291 U.S. 320 (1934).

Supp. 91 (D. Ore. 1972); *Jefferies v. Sugarman*, ___ F. Supp. ___, No. 71 Civ. 2060 (S.D. N.Y. July 11, 1972).

These holdings merely apply that long-standing body of law that holds that a state may not enact legislation that conflicts with federal statutes. See *e.g.*, *Perez v. Campbell*, 402 U.S. 637 (1971); *Sears Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225 (1964); *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84 (1963); *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148 (1942); *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173 (1942); *Hines v. Davidowitz*, 312 U.S. 52 (1941). In *Sola Electric Co., supra,* the Court said:

> "It is familiar doctrine that the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules." 317 U.S. 173, 176.

The New York Work Rules "set at naught" the standards for compulsory referral to work or training of AFDC recipients set forth in the Social Security Act and deny AFDC recipients the benefits of access to WIN.

Neither lack of intent to frustrate the effectiveness of WIN nor the existence of an independent policy rationale for the Work Rules can justify these conflicts:

> "We can no longer adhere to the aberrational doctrine of *Kesler* [*v. Department of Public Safety*, 369 U.S. 153 (1962)] and *Reitz* [*v. Mealey*, 314 U.S. 33 (1941)] that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration .... Thus we conclude that *Kesler* and *Reitz* can have no authoritative effect to the extent they are inconsistent with the controlling principle that *any state legislation which frustrates the full effectiveness of federal law is rendered invalid by*

the Supremacy Clause." *Perez v. Campbell*, 402 U.S. 637, 651-52 (1971) (Emphasis supplied).

It should be obvious that the full effectiveness of federal law is frustrated by a state program that circumvents the services offered in a federal program, results in termination of assistance to those Congress exempted from such terminations and accomplishes such terminations pursuant to procedures vastly different from those established by Congress.

In the same case this Court restated the test thus:

> "[I]n the final analysis, our function is to determine whether a challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz*, 312 U.S. 52, 67, (1941). Since *Hines* the Court has frequently adhered to this articulation of the meaning of the Supremacy Clause [citations omitted]." *Perez v. Campbell*, 402 U.S. 637, 649 (1971).

The many conflicts between the provisions of WIN and the New York Work Rules and the frustration of federal purpose inherent in the circumvention of WIN services, manifestly fall within this rule.

Nor is it necessary that Congress expressly prohibit state enactments for the rule prohibiting state law conflicts with federal law to apply. If conflict with or frustration of a federal statute is the effect of a state statute, state law must yield. *Savage v. Jones*, 225 U.S. 501, 533 (1912).

Defendants seek support in cases that deal with alleged conflicts between federal and state statutes, *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Huron Portland Cement Co. v. City of Detroit*, 362 U.S.

440 (1960); *Joseph E. Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35 (1966). Brief of State Defendants at 24-28. In each of those cases the Court specifically found that no conflict existed. Such a conclusion would be impossible here. Where the conflicts are clear, the conflicting state laws are necessarily invalid.

In *Colorado Anti-Discrimination Commission v. Continental Air Lines, Inc.*, 372 U.S. 714 (1963), a case in which this Court declined to conclude that "... the purpose of the federal statute would *to some extent* be frustrated by the state statute in question...." (372 U.S. 714, 722) (Emphasis supplied), it was said:

> "It is not contended, however, that the Colorado statute is in direct conflict with federal law [citing *McDermott v. Wisconsin*, 228 U.S. 115 (1913)], that it denies rights granted by Congress [citing *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U.S. 62 (1956)], or that it stands as an obstacle to the full effectiveness of a federal statute [citing *Hill v. Florida*, 325 U.S. 538 (1945); *Hines v. Davidowitz*, 312 U.S. 52 (1941)]." 372 U.S. 714, 722. See also *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963).

The New York Work Rules, on the contrary, are in direct conflict with WIN, deny rights granted by WIN and stand as an obstacle to the full effectiveness of WIN.

II.

THE NEW YORK WORK RULES ARE INVALID BECAUSE THEY OPERATE IN A FIELD OCCUPIED BY FEDERAL LEGISLATION.

Even if direct conflict and frustration of WIN were not the result of the New York Work Rules, those Rules must fall under the principle that where Congress has acted with intent to regulate exclusively, the states may not

act. See, *e.g.*, *Graham v. Richardson*, 403 U.S. 365 (1971); *Pennsylvania v. Nelson*, 350 U.S. 497 (1956); *Napier v. Atlantic Coast Line R.R. Co.*, 272 U.S. 605 (1926); *Charleston & Western Carolina R. Co. v. Varnville Furniture Co.*, 237 U.S. 597 (1915); *Woolfolk v. Brown*, 456 F.2d 652, 654 (4th Cir.), *cert. denied*, ___ U.S. ___, 93 S.Ct. 112 (1972). In *Varnville Furniture Co.*, Justice Holmes stated the rule applicable to such cases:

> "When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go. . . . " 237 U.S. at 604 [citations omitted].

Here New York has gone farther than Congress where Congress has already taken the area in hand.

The court below concluded that " . . . WIN preempts the Work Rules Program." 348 F. Supp. at 297. The Defendants, repeatedly characterizing Plaintiffs' arguments on this point as urging pre-emption of the entire area of social welfare, miss the court's point. The court concluded that the area of compulsory work for federal welfare recipients has been so comprehensively regulated by Congress that the states may not act in this field. 348 F. Supp. at 297. The court was correct for two reasons: (1) Congress established WIN as the federal work program for *all* AFDC recipients; (2) the WIN program is a program, designed to result in employability, which is so comprehensive that it leaves no room for the operation of other programs.

Before the 1971 Amendments, 42 U.S.C. §602(a)(19)(A) required all recipients to be classified as appropriate or inappropriate; the appropriate had to be referred, the inappropriate could volunteer—only those for whose welfare (or for whose families' welfare) participation would be inimical could not participate and it was clear

that they could not participate. Since the 1971 Amendments, all recipients must register for pre-WIN employment services unless they come within a category excluded by Congress. Those registered must then be certified to the Secretary of Labor after they have received services which render them ready for WIN. In short, the WIN legislation is addressed to all AFDC recipients, leaving no employable recipients to be subject to state work rules. The legislative history in the Senate establishes that WIN was designed to provide for all AFDC recipients; the appropriate must participate, while the inappropriate may participate if they wish. *Supra*, at page 19. The structure of the 1971 Amendments establishes that, beyond this, WIN, through its service provisions, is to reach out and assist even those recipients who would otherwise be unemployable.

Further evidence of this intent is found in the Report of the House Ways and Means Committee on the WIN legislation of 1967:

> "Under your committee's bill, States would be required to develop a program *for each appropriate* relative and dependent child which would assure, to the maximum extent possible, that each individual would enter the labor force, *in order to become self-sufficient*. To accomplish this, the States would have to assure that *each* adult in the family and each child over age 16 who is not attending school is given, when appropriate, employment counseling, testing, and job training." H.R. Rep. No. 544, 90th Cong., 1st Sess. at 16 (1967) (Emphasis supplied).

And to similar effect:

> "*Every adult member and child* over 16 not attending school for whom it was determined that work or training is appropriate would be required to participate. . . . " *Id.* at 16 (Emphasis supplied).

"The committee is recommending the enactment of a series of amendments.... These changes are–(1) A requirement that all States establish a program *for each appropriate* AFDC adult and older child...." *Id.* at 96 (Emphasis supplied).

"Your committee intends that a proper evaluation be made of the situation of *all mothers* to ascertain the extent to which appropriate child-care arrangements should be made available...." *Id.* at 103 (Emphasis supplied).

In 1971, the intent to compel the states to apply WIN to all recipients was reiterated when Congress imposed a penalty on the states for failure to certify to WIN annually at least 15% of those registered. See 42 U.S.C.A. §603(c). Another indication of this renewed intent is the fact that Congress when it enacted WIN in 1971 also enacted, in the Revenue Act of 1971, a tax credit for private employers of persons referred by WIN. Pub. L. 92-178, 85 Stat. 497, 26 U.S.C.A. (I.R.C. 1954) §§40, 50A, 50B (1973 Supp.). Had Congress envisioned referral of AFDC recipients to employment under state programs, it need not have limited the tax credit to employers of WIN participants.

Secondly, the services established by WIN are so comprehensive that it is hard to imagine that Congress would allow the states to ignore it at will. See *supra* at 16-18. There is no need to repeat here the elaborate detail of that program. As the Fourth Circuit stated in *Woolfolk v. Brown*, 456 F.2d 652 (4th Cir. 1972):

"...[W]e agree with the district court that by adoption of the Work Incentive Program Congress intended to preempt work rules for those in the federally assisted AFDC category since

> 'The thrust of the congressional approach—comprehensive regulation of the relation between the state and the beneficiary, a full range of programs designed to be of substantial permanent benefit to the individual, specificity as to those activities which the recipient must undertake lest sanctions be imposed, and limitation of sanctions to particular classes of recipients—is inconsistent with the continued application, as in these cases, of a state work rule which attempts to relieve the burden of welfare costs and place the recipient in employment in an imprecise and summary fashion. *Woolfolk v. Brown*, 325 F. Supp. 1162 at 1170 (E.D. Va. 1971).' " 456 F.2d at 654-55.

To rebut the overwhelming evidence of preemptive intent found in the language of the statute and its legislative history, the Defendants point to the fact that Congress envisioned the implementation of WIN in less than all social services districts. See Brief of State Defendants at 32, 37-38. Defendants also urge that Congress intended to allow WIN to be supplemented by state efforts. See Brief of State Defendants at 39.

As to the former, Congress did not intend that AFDC recipients in districts without WIN programs would have no access to WIN. Rather, Congress required establishment of WIN in districts having a significant number of AFDC recipients over 16 years of age and further required the Secretary of Labor to use his best efforts to provide access to WIN to those residing in other districts. 42 U.S.C.A. §632(a). (New York State WIN programs in fact operate in districts accounting for at least 90% of the state AFDC population. Brief of State Defendants at 18.) Rather than exempting from registration all those who reside in the non-WIN districts, Congress exempted only

those who are "so remote from a work incentive project that [their] effective participation is precluded." 42 U.S.C.A. §602(a)(19)(A)(iii). The District Court in *Woolfolk v. Brown, supra*, correctly interpreted these provisions to require:

> "... a specific, individual finding by the welfare authorities that a given individual is inappropriate by reason of his location rather than the application of a general rule covering all in a certain area. Indeed the provision would seem to allow a finding that a resident of an area containing a WIN program was nonetheless too distant from it for mandatory referral, and it would be strange to give the language a different construction, calling for other than case-by-case consideration, in another context." *Woolfolk v. Brown*, 325 F. Supp. 1162, 1175 (E.D. Va. 1971).

In other words distance, like other factors, can render a recipient unable to participate.

Perhaps the Defendants have emphasized the problem in non-WIN areas because the Work Rules' effective frustration of federal purpose in WIN areas is so apparent. But analysis of the WIN scheme makes clear the intent of Congress to exempt from WIN, *and therefore from compulsory referral to work* (see *supra*, at page 8), those too distant from available services.[20] This reading is

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[20] Although the State Defendants have strenuously argued for the need of the State to be permitted to refer AFDC recipients in non-WIN areas, the 1972 legislature, perhaps in recognition of the problems inherent in setting up a program of compulsory work in sparsely populated areas, seems to have exempted from the Work Rules' operation those who are so remote from a WIN program that they cannot participate. See N.Y. Soc. Serv. L. §131(4), as amended N.Y. Laws of 1972, Ch. 941, §§1, 4.

consistent with the overall Congressional approach, which is that compulsory referral absent needed services is not to be sanctioned.

As to their second point, Defendants argue that the New York program is an effective supplement to WIN for those for whom WIN is not available. Yet the "effectiveness" of the New York program is questionable at best. Congress obviously placed more emphasis on training and services than did New York. The wisdom of this Congressional judgment is apparent when the effectiveness of WIN is compared to that of the New York Work Rules. A comparison of job placements demonstrates that WIN placements were generally higher quality placements than were Work Rules placements.[21]

[21] Even before it was amended effective July 1, 1971, N.Y. Soc. Serv. L. §131(4) provided for referral of public assistance recipients to jobs outside WIN. That statute was applied to only a fraction of the recipients later subjected to the New York Work Rules, yet SES was unable to place even those recipients in jobs. See NYDOL, "Employment Service Activities for Welfare Clients New York State, 1968-1970", at 6-7 (Ex. 34). NYDOL compared the nature of job placements in WIN with those under §131(4) in the following terms:

> "The largest number of WIN placements—33 per cent of the total—was made in clerical and sales jobs. Service occupations accounted for 25 per cent of all placements, and professional, technical and managerial jobs, 14 per cent. This latter figure for professional, technical and managerial jobs is more than double the 1969 placement figure of 5.7 per cent. This contrasts with 1970 placements of clients referred to jobs under Section 131.4 of the Social Services Law in 1970—only 2.1 per cent in professional and managerial occupations and 12 per cent in clerical and sales jobs.
>
> "WIN enrollees also earned higher rates of pay than other social services clients. Hourly earnings of WIN enrollees have risen since 1969. There may be several reasons for this: (1) higher state and federally-mandated minimum wage rates; (2) higher pay rates in general and (3) more frequent placement in high-paying professional, technical and managerial jobs.

Likewise, a large percentage of the jobs in which recipients were placed under the Work Rules proved to be temporary: over two thirds of those placed were no longer employed after three months; almost one third were separated from employment within the first week, and an additional one fifth had been separated by the end of the fourth week following placement. Ex. 47 (*Joint Study*) at 28-31. No doubt many of those separated return to welfare.

As to the availability of WIN openings, the State Defendants compare WIN and the New York Work Rules on the basis of statistics which are difficult to evaluate because they are unsupported by any reference either to the record below or to any other available source. See generally Brief of State Defendants at 38. The State

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"On December 31, 1969, only 9.5 per cent of employed WIN enrollees were earning $3.00 or more per hour. In contrast, during the July-December 1970 period, 9.8 per cent earned $3.00-$3.49 per hour, 4.3 per cent earned $3.50-$3.99 an hour, and 3.2 per cent of WIN participants placed in jobs had earnings of $4.00 or more. Thus, a total of 17.3 per cent were earning $3.00 or more an hour, compared with only 6 per cent of those placed under the Section 131.4 program. An even greater percentage of the New York City WIN enrollees were in the higher earning brackets.

"It is apparent that the WIN program is lifting some of its participants out of the lower-level, frequently irregular jobs in favor of better-paying, steadier work. The Employment Service is able to achieve this through special techniques and intensive teamwork." Ex. 34 at 17.

It is not surprising that pursuant to the expanded compulsory work program created by the New York Work Rules in 1971, §131(4) job placements still compared most unfavorably with WIN. [Figures for referrals under the Work Rules are from HEW, USDOL, NYDOL, DSS "Study of Selected Aspects of the 1971 New York State Legislative Provisions on Public Assistance Employables" (March, 1972), Ex. 47, Table 11 at 27 (hereafter, "*Joint Study*"); WIN Statistics are from Ex. 34, Table 6 at 18]:

Defendants compare the number of AFDC recipients who entered WIN in 1971 with the number of "referrals" under the Work Rules. Brief of State Defendants at 17. This comparison is meaningless because: (a) a large proportion of those "referred" under the Work Rules were not AFDC recipients (while WIN only applies to AFDC recipients),[22] and (b) a single recipient might have

Occupational Category	Percentage Placements under §131(4), July-October 1971	Percentage Placements of WIN Enrollees July-Dec., 1970
Professional, Technical & Managerial	1.5%	13.8%
Clerical & Sales	15.0%	33.4%
Domestic & other service	29.2%	25.1%
Farming, Fishery & Forestry	-	0.7%
Processing	7.7%	1.5%
Machine Trades	5.6%	4.5%
Bench Work	11.4%	4.4%
Structural Work	7.7%	5.1%
Motor Freight & Transportation	7.1%	-
Packaging Materials Handling	12.3%	-
Miscellaneous	2.5%	11.5%

[22] The State Defendants declined to provide state-wide statistics indicating the proportion of AFDC recipients subjected to the Work Rules (A. 266). However, in Erie County approximately one half of those required to pick up their welfare checks at SES were in the Home Relief category (A. 319).

been "referred" on more than one occasion. (That this frequently occurred is evidenced by the small proportion of referrals resulting in placements and by the short duration of Work Rules jobs.) In light of the job *placement* figures under the Work Rules, this statistic merely indicates that the State Defendants were sending recipients on futile quests for non-existent jobs (Stips. ¶¶106, 108, 110).

To support the "supplementary" effect of the Work Rules, Defendants next argue, again without citation, that the impact of WIN is relatively small when compared with the number of "employable" AFDC recipients in New York State. Brief of State Defendants at 38; Brief of Onondaga Defendants at 22. Yet 67% of those who were found employable under the New York Work Rules who declared themselves unemployable in November 1971, the fifth month of implementation of the program, were eventually found to have been incorrectly referred. See 348 F. Supp. at 296 fn. 10; Ex. 47 (*Joint Study*) at 19. And there is evidence in the record that not all WIN openings were being utilized by the State (A. 228). Compare Brief of State of California, *amicus curiae* at 6. Moreover, although again the asserted figures are unsupported, even the State Defendants' statistics indicate that WIN will have 63,000 openings for an estimated 75,000 registered recipients potentially certifiable to WIN. Brief of State Defendants at 17-18. Since not all registered recipients will be ready for certification immediately and since WIN in the past has had a 100% annual turnover rate (i.e., was able to service twice as many recipients per year as openings) (Brief of State Defendants at 17), all currently registered recipients who are ready for certification can presumably be served by WIN within one year.

The statistics hardly indicate that Congress has created a program which needs supplementation to serve the employment needs of AFDC recipients. Congress has acted comprehensively; that it has acted to the exclusion of the states is the inevitable conclusion.

III.

THE NEW YORK WORK RULES ESTABLISH ADDITIONAL CONDITIONS OF ELIGIBILITY IN VIOLATION OF THE REQUIREMENTS OF 42 U.S.C. §602(a)(10).

An alternative ground on which the decision of the court below rested was that the New York Work Rules, by denying assistance to those meeting the standards for eligibility established by the Social Security Act, violate the requirement of 42 U.S.C. §602(a)(10) that "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." 348 F. Supp. at 295. In so holding, the court was correctly applying the principle repeatedly articulated by this Court that "a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." *Townsend v. Swank*, 404 U.S. 282, 286 (1971) (exclusion of otherwise eligible "dependent children" attending colleges or universities invalid). See also *Carleson v. Remillard*, 406 U.S. 598 (1972); (exclusion of families in which the parent's "continued absence" from the home was due to military service invalid); *King v. Smith*, 392 U.S. 309 (1968) ("man in the house" rule, by which AFDC was denied to otherwise eligible families if the mother cohabitated with a man, invalid).

Similarly, New York has established a condition of eligibility not contained in the Social Security Act: compliance with the provisions of the New York Work Rules. The New York Work Rules provide:

> "No assistance or care shall be given to an employable person who has not registered with the nearest local employment agency of the department of labor or has refused to accept employment in which he is able to engage." N.Y. Soc. Serv. L. §131(4).

Subsumed under this general eligibility condition are a variety of obligations, noncompliance with any one of which results in a mandatory denial or termination of assistance. These eligibility conditions are applied to all "employable" AFDC applicants or recipients, whether or not they are eligible for or registered for WIN:

(a) "Employable" AFDC recipients must report in person semi-monthly to SES offices to obtain their public assistance checks. N.Y. Soc. Serv. L. §131(4).

(b) "Employable" applicants for and recipients of AFDC must report to any job interview to which they are referred. N.Y. Soc. Serv. L. §131(4).

(c) "Employable" applicants for and recipients of AFDC must report to SES the results of any referral to employment. N.Y. Soc. Serv. L. §131(4).

(d) "Employable" applicants for and recipients of AFDC who are mothers must make "diligent efforts" to secure child care. N.Y. Soc. Serv. L. §131(4); see Dep. of Edward Phillips at 64-66 (A. 247-248).

(e) "Employable" applicants for and recipients of AFDC must accept referral to and participate in

public works projects established pursuant to N.Y. Soc. Serv. L. §350-k.[23] N.Y. Soc. Serv. L. §131(4).

(f) No applicant for or recipient of AFDC may terminate employment or reduce earning capacity "without good cause." N.Y. Soc. Serv. L. §131(10); 18 N.Y.C.R.R. §385.7 (formerly §385.6, A. 126).

(g) No applicant for AFDC is eligible for assistance if within thirty days of application, AFDC assistance to the applicant was denied or terminated for failure to comply with the New York Work Rules. 18 N.Y.C.R.R. §385.7 (formerly §385.6, A. 126).

The operation of the Work Rules as an additional eligibility condition is particularly apparent in the case of the otherwise eligible applicants denied AFDC at the threshold for a failure to comply with some aspect of the Rules, and those who are ineligible for AFDC during a thirty day penalty period imposed under the Rules.

These added conditions of eligibility are not merely theoretical. Until the issuance of an injunction by the court below, they were applied to terminate or deny AFDC assistance to thousands of otherwise eligible recipients. A local administrator praised the program in the following terms:

"Last month, the weekend of October 5, we closed 100 cases. I haven't really gotten the closing codes for all these cases. I would say 24 of these cases were closed because of the refusal to comply with departmental policy and 15 were closed because of refusal to register or seek employment. I would think that the employment section is having a greater impact on the rate of closing. . . . we are closing a very great proportion of cases on the basis

[23]This requirement has not been enforced though the statute remains on the books. See footnote 12, *supra* at p. 12.

of failure to comply on the employment procedures." Quoted in *Report of the Subcommittee on Welfare Reform of the New York State Temporary Commission to Revise the Social Services Law* (Ex. 43), at 4-5.

In addition, the Work Rules operated to deny or terminate many more recipients than were placed in jobs or training (See Stips. ¶¶106-111).[24]

In *Townsend v. Swank*, this Court declared that "in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history. . . ," state eligibility standards which go beyond those established by the Social Security Act are invalid. 404 U.S. at 286.

The Defendants have not met the burden of showing that any of the conditions of eligibility imposed by the New York Work Rules are authorized by the Social Security Act; moreover, these conditions of eligibility are in direct conflict with the provisions of the Social Security Act.

The Social Security Act, as modified by the 1971 Amendments, requires that every individual not excluded by the statute must register for pre-WIN services "as a condition of eligibility." 42 U.S.C.A. §602(a)(19)(A). This provision, and the further requirements for satisfactory participation in WIN of those registered and

[24] The statistics contained in the Stipulations of Fact are for both AFDC recipients and recipients of other forms of public assistance. The State Defendants maintained throughout this litigation that statistics by category of public assistance were unavailable. Presumably, the ratio of those AFDC applicants or recipients placed to those AFDC applicants or recipients upon whom sanctions were imposed would roughly correspond to the ratio in the "employable" population as a whole. See also discussion *supra*, at pages 33-36.

certified, are the *only* work-related *eligibility requirements* imposed on AFDC recipients. It should be clear that those required to register for WIN have satisfied the federal standard of eligibility once they register, thus making themselves available for certification to WIN.

It is equally apparent that Congress did not intend that those for whom registration for WIN is *not* a condition of eligibility under 42 U.S.C.A. §602(a)(19)(A) (including mothers and other caretakers of children under 6, and those recipients who are "so remote from a work incentive project that [their] effective participation is precluded") would be required to register at SES and accept referrals to jobs under pain of termination of assistance. Congress intended those it exempted from required participation in WIN to be exempt from any compulsory work requirement. Thus Senator Long, who introduced and explained the 1967 bill creating WIN, stated:

> "The Senate Committee feels work should not be required as a condition of drawing welfare payments as to certain people. *We spell out those people we think should not be required to go to work.*" 113 Cong. Rec. 32593 (1967) (emphasis supplied).

The legislative history, far from evidencing "congressional authorization" for eligibility conditions such as the New York Work Rules, see *Townsend v. Swank, supra*, indicates that precisely the opposite result was intended. This congressional purpose, implicit in the 1967 legislation, was made explicit in the 1971 Amendments when Congress, presumably aware of the *King-Townsend* line of cases, made registration for and participation in WIN a "condition of eligibility" for all but specified AFDC recipients. 42 U.S.C.A. §602(a)(19)(A). The 1971 Amendments were intended to remedy inconsistent

applications of this condition of eligibility by the states. See statement of Senator Talmadge 117 Cong. Rec. 20569 (Dec. 4, 1971) set out *supra* at pages 21-22.

Defendants seek to establish that various other provisions of the Social Security Act authorize the conditions of eligibility created by the Work Rules. The State Defendants insist that 42 U.S.C. §602(a)(8) authorizes the termination of assistance, for 30 days, to any person who has reduced earning capacity, quit a job, or refused employment offered through a state employment service. Brief of State Defendants at 22. However, the District Court correctly read the statute as merely authorizing the state not to apply the income disregard provided by the Act. See 348 F. Supp. at 295. This is so obvious from the language of the statute that it is difficult to understand why the State continues to rely on this point. The Onondaga Defendants recognize the District Court's reading as being correct, but complain that the sanction created by Congress is insufficiently harsh. Brief of Onondaga Defendants, at 18.

The Onondaga Defendants, citing 42 U.S.C.A. §602(a)(19)(F), argue that the State is authorized to terminate assistance to those declining work which is "... offered through the public employment offices of the State, or is otherwise offered by an employer...." Brief of Onondaga Defendants at 16-17. This is erroneous because that section authorizes only termination of assistance to those AFDC recipients "certified" to WIN, and then only on the basis of findings by the Secretary of Labor. In addition, the sanctions may not be applied until opportunity for 60 days of counseling has been provided "... aimed at persuading [the recipient] ... to participate in such program...." Since "program" obviously refers to WIN, Congress was creating sanctions exclusive to WIN in §602(a)(19)(F).

Defendants also seek support in a Committee Report relating to the 1961 legislation creating the AFDC-U program. Brief of Onondaga Defendants at 18-19. Whatever was intended at the time, the 1961 legislation must now be viewed in light of Congress' subsequent creation and expansion of WIN: the requirement that every AFDC-U recipient be referred to WIN within 30 days of the grant of assistance [42 U.S.C. §607(b)(2)(A)], and the requirement that recipients of AFDC-U be the first referred and certified to WIN [42 U.S.C.A. §633(a)] indicate beyond doubt that Congress intended AFDC-U work referrals to be accomplished through WIN.

Finally, the Onondaga Defendants seek comfort in the views of the United States Department of Health, Education and Welfare,[25] citing a memorandum of law *amicus curiae* submitted in another lawsuit. Brief of Onondaga Defendants at 20-21. However the views of H.E.W. on the issue of preemption may be construed, the cited memorandum of HEW recognized that state-imposed work rules may constitute additional conditions of eligibility in violation of this Court's holding in *Townsend v. Swank* and *Carleson v. Remillard, supra.* United States Department of Health, Education and Welfare, Memorandum of Law *amicus curiae, Jefferies v. Sugarman,* No. 72-8108 (2nd Cir.) at 4-5.

New York has created an illegal additional condition of eligibility by imposing extensive reporting, work, check pick-up, child-care search and other requirements as conditions of assistance on those otherwise eligible for AFDC. New York uses these conditions to deny AFDC to eligible recipients in violation of the Social Security Act.

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[25] The views of HEW were solicited in this case by the Plaintiffs and the court to no avail. See 348 F. Supp. at 295 n. 8.

CONCLUSION

The judgment of the District Court should be affirmed.

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APPENDIX

United States Constitution, Article VI, Clause 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

42 U.S.C.A. §602(a):

§602. State plans for aid and services to needy families with children; contents; approval by Secretary

(a) A State plan for aid and services to needy families with children must

* * * * *

(10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals;

* * * * *

(19) provide–

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, and employment as provided by regulations of the Secretary of Labor, unless such individual is–

(i) a child who is under age 16 or attending school full time;

(ii) a person who is ill, incapacitated, or of advanced age;

(iii) a person so remote from a work incentive project that his effective participation is precluded;

(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

(v) a mother or other relative of a child under the age of six who is caring for the child; or

(vi) the mother or other female caretaker of a child, if the father or another adult male relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph);

and that any individual referred to in clause (v) shall be advised of her option to register, if she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to her in the event she should decide so to register;

(B) that aid under the plan will not be denied by reason of such registration or the individual's certification to the Secretary of Labor under subparagraph (G) of this paragraph, or by reason of an individual's participation on a project under the program established by section 632(b) (2) or (3) of this title;

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of 10 per centum of the cost of such programs, as specified in section 635(b) of this title;

(D) that (i) training incentives authorized under section 634 of this title, and income derived from a special work project under the program established by section 632(b)(3) of this title shall be disregarded in

determining the needs of an individual under section 602(a)(7) of this title, and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 632(b)(2) or (3) of this title shall be taken into account;

(E) Repealed. Pub. L. 92-223, §3(a)(5), Dec. 28, 1971, 85 Stat. 804.

(F) that if and for so long as any child, relative, or individual (certified to the Secretary of Labor pursuant to subparagraph (G)) has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment–

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7), and aid for any dependent child in the family in the form of payments of the type described in section 606(b)(2) of this title (which in such a case shall be without regard to clauses (A) through (E) thereof) or section 608 of this title will be made;

(ii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iii) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

(iv) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under clause (7);

except that the State agency shall, for a period of sixty days, make payments of the type described in section 606(b)(2) of this title (without regard to clauses (A) through (E) thereof) on behalf of the relative specified in clause (i), or continue aid in the case of a child specified in clause (ii) or (iii), or take the individual's needs into account in the case of an individual specified in clause (iv), but only if during such period such child, relative, or individual accepts counseling or other services (which the State agency shall make available to such child, relative, or individual) aimed at persuading such relative, child, or individual, as the case may be, to participate in such program in accordance with the determination of the Secretary of Labor; and

(G) that the State agency will have in effect a special program which (i) will be administered by a separate administrative unit and the employees of which will, to the maximum extent feasible, perform services only in connection with the administration of such program, (ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A), in accordance with the order of priority listed in section 633(a) of this title, such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under part C, and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under part C, (iii) will participate in the development of operational and employability

plans under section 633(b) of this title; and (iv) provides for purposes of clause (ii), that, when more than one kind of child care is available, the mother may choose the type, but she may not refuse to accept child care services if they are available;

42 U.S.C.A. §603:

(a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to subsection (d)) pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958–

* * * * *

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan–

(A) 75 per centum of so much of such expenditures as are for–

(i) any of the services described in clauses (14) and (15) of section 602(a) of this title which are provided to any child or relative who is receiving aid under the plan, or to any other individual (living in the same home as such relative and child) whose needs are taken into account in making the determination under clause (7) of such section,

(ii) any of the services described in clauses (14) and (15) of section 602(a) of this title which are provided to any child or relative who is applying for aid to families with dependent children or who, within such period or periods as the Secretary may prescribe, has been or is likely to become an applicant for or recipient of such aid, or

(iii) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of the remainder of such expenditures.

* * * * *

(c) Notwithstanding any other provision of this Act, the Federal share of assistance payments under this part shall be reduced with respect to any State for any fiscal year after June 30, 1973, by one percentage point for each percentage point by which the number of individuals certified, under the program of such State established pursuant to section 602(a)(19)(G) of this title, to the local employment office of the State as being ready for employment or training under part C, is less than 15 per centum of the average number of individuals in such State who, during such year, are required to be registered pursuant to section 602(a)(19)(A) of this title.

(d)(1) Notwithstanding subparagraph (A) of subsection (a)(3) the rate specified in such subparagraph shall be 90 per centum (rather than 75 per centum) with respect to social and supportive services provided pursuant to section 602(a)(19)(G) of this title.

(2) Of the sums authorized by section 601 of this title to be appropriated for the fiscal year ending June 30, 1973, not more than $750,000,000 shall be appropriated to the Secretary for payments with respect to services to which paragraph (1) applies.

42 U.S.C.A. §§630 *et seq.*:

§630. Statement of purpose

The purpose of this part is to require the establishment of a program utilizing all available manpower

services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in public service employment, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this part will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.

§631. Authorization of appropriations—Transfer of moneys

(a) There is hereby authorized to be appropriated to the Secretary of Health, Education, and Welfare for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of Health, Education, and Welfare shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.

On-the-job training and public service employment programs; percentage limitation

(b) Of the amounts expended from funds appropriated pursuant to subsection (a) of this section for any fiscal year (commencing with the fiscal year ending June 30, 1973), not less than 33 1/3 per centum thereof shall be expended for carrying out the program of on-the-job training referred to in

section 632(b)(1)(B) of this title and for carrying out the program of public service employment referred to in section 632(b)(3) of this title.

Allotment to States; percentage limitation; formula

(c) Of the sums appropriated pursuant to subsection (a) of this section to carry out the provisions of this part for any fiscal year (commencing with the fiscal year ending June 30, 1973), not less than 50 percent shall be allotted among the States in accordance with a formula under which each State receives (from the total available for such allotment) an amount which bears the same ratio to such total as—

(1) in the case of the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974, the average number of recipients of aid to families with dependent children in such State during the month of January last preceding the commencement of such fiscal year bears to the average number of such recipients during such month in all the States; and

(2) in the case of the fiscal year ending June 30, 1975, or in the case of any fiscal year thereafter, the average number of individuals in such State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 602(a)(19)(A) of this title bears to the average number of individuals in all States who, during such month, are so registered.

§ 632. Establishment of programs—State and political subdivisions as situs for programs

(a) The Secretary of Labor (hereinafter in this part referred to as the Secretary) shall, in accordance with the provisions of this part, establish work incentive

programs (as provided for in subsection (b) of this section) in each State and in each political subdivision of a State in which he determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children. In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established.

Description of programs

(b) Such programs shall include, but shall not be limited to, (1)(A) a program placing as many individuals as is possible in employment, and (B) a program utilizing on-the-job training positions for others, (2) a program of institutional and work experience training for those individuals for whom such training is likely to lead to regular employment, and (3) a program of public service employment for individuals for whom a job in the regular economy cannot be found.

Grants to or agreements with agencies or organizations

(c) In carrying out the purposes of this part the Secretary may make grants to, or enter into agreements with, public or private agencies or organizations (including Indian tribes with respect to Indians on a reservation), except that no such grant or agreement shall be made to or with a private employer for profit or with a private nonprofit employer not organized for a public purpose for purposes of the work experience program established by clause (2) of subsection (b) of this section.

Use of authorities for providing manpower training and employment services and opportunities;

use of funds; reimbursement of agencies for services

(d) In providing the manpower training and employment services and opportunities required by this part, the Secretary of Labor shall, to the maximum extent feasible, assure that such services and opportunities are provided by using all authority available to him under this chapter or any other Act. In order to assure that the services and opportunities so required are provided, the Secretary of Labor shall use the funds appropriated to him under this part to provide programs required by this part through such other Act, to the same extent and under the same conditions (except as regards the Federal matching percentage) as if appropriated under such other Act and, in making use of the programs of other Federal, State, or local agencies (public or private), the Secretary of Labor may reimburse such agencies for services rendered to persons under this part to the extent such services and opportunities are not otherwise available on a nonreimbursable basis.

Prohibition against reduction of other statutory manpower services

(e) The Secretary shall take appropriate steps to assure that the present level of manpower services available under the authority of other statutes to recipients of aid to families with dependent children is not reduced as a result of programs under this part.

Labor Market Advisory Council; establishment for appropriate geographic area; functions; representation of area interests; institutional training

(f) (1) The Secretary of Labor shall establish in each State, municipality, or other appropriate geographic area with a significant number of persons

registered pursuant to section 602(a)(19)(A) of this title a Labor Market Advisory Council the function of which will be to identify and advise the Secretary of the types of jobs available or likely to become available in the area served by the Council; except that if there is already located in any area an appropriate body to perform such function, the Secretary may designate such body as the Labor Market Advisory Council for such area.

(2) Any such Council shall include representatives of industry, labor, and public service employers from the area to be served by the Council.

(3) The Secretary shall not conduct, in any area, institutional training under any program established pursuant to subsection (b) of this section of any type which is not related to jobs of the type which are or are likely to become available in such area as determined by the Secretary after taking into account information provided by the Labor Market Advisory Council for such area.

§633. Operation of program

(a) The Secretary shall provide a program of testing and counseling for all persons certified to him by a State, pursuant to section 602(a)(19)(G) of this title, and shall select those persons whom he finds suitable for the programs established by clauses (1) and (2) of section 632(b) of this title. Those not so selected shall be deemed suitable for the program established by clause (3) of such section 632(b) of this title unless the Secretary finds that there is good cause for an individual not to participate in such program. The Secretary, in carrying out such program for individuals certified to him under section 602(a)(19)(G) of this title, shall accord priority to such individuals in the following order, taking into account employability potential: first, unemployed fathers; second, mothers

whether or not required to register pursuant to section 602(a)(19)(A) of this title, who volunteer for participation under a work incentive program; third, other mothers, and pregnant women, registered pursuant to section 602(a)(19)(A) of this title, who are under 19 years of age; fourth, dependent children and relatives who have attained age 16 and who are not in school or engaged in work or manpower training; and fifth, all other individuals so certified to him.

(b)(1) For each State the Secretary shall develop jointly with the administrative unit of such State administering the special program referred to in section 602(a)(19)(G) of this title a statewide operational plan.

(2) The statewide operational plan shall prescribe how the work incentive program established by this part will be operated at the local level, and shall indicate (i) for each area within the State the number and type of positions which will be provided for training, for on-the-job training, and for public service employment, (ii) the manner in which information provided by the Labor Market Advisory Council (established pursuant to section 632(f) of this title) for any such area will be utilized in the operation of such program, and (iii) the particular State agency or administrative unit thereof which will be responsible for each of the various activities and functions to be performed under such program. Any such operational plan for any State must be approved by the Secretary, the administrative unit of such State administering the special program referred to in section 602(a)(19)(G) of this title, and the regional joint committee (established pursuant to section 639 of this title) for the area in which such State is located.

(3) The Secretary shall develop an employability plan for each suitable person certified to him pursuant to section 602(a)(19)(G) of this title which shall

describe the education, training, work experience, and orientation which it is determined that such person needs to complete in order to enable him to become self-supporting.

(c) The Secretary shall make maximum use of services available from other Federal and State agencies and, to the extent not otherwise available on a nonreimbursable basis, he may reimburse such agencies for services rendered to persons under this part.

(d) To the extent practicable and where necessary, work incentive programs established by this part shall include, in addition to the regular counseling, testing, and referral available through the Federal-State Employment Service System, program orientation, basic education, training in communications and employability skills, work experience, institutional training, on-the-job training, job development, and special job placement and followup services, required to assist participants in securing and retaining employment and securing possibilities for advancement.

(e)(1) In order to develop public service employment under the program established by section 632(b)(3) of this title, the Secretary shall enter into agreements with (A) public agencies, (B) private nonprofit organizations established to serve a public purpose, and (C) Indian tribes with respect to Indians on a reservation, under which individuals deemed suitable for participation in such a program will be provided work which serves a useful public purpose and which would not otherwise be performed by regular employees.

(2) Such agreements shall provide–

(A) for the payment by the Secretary to each employer, with respect to public service employment performed by any individual for such employer, of an amount not exceeding 100 percent of the cost of providing such employment to such individual during the first year of such employment,

an amount not exceeding 75 percent of the cost of providing such employment to such individual during the second year of such employment, and an amount not exceeding 50 percent of the cost of providing such employment to such individual during the third year of such employment;

(B) the hourly wage rate and the number of hours per week individuals will be scheduled to work in public service employment for such employer;

(C) that the Secretary will have such access to the premises of the employer as he finds necessary to determine whether such employer is carrying out his obligations under the agreement and this part; and

(3) Repealed. Pub. L. 92-223, §3(b)(4)(c)(iv), Dec. 28, 1971, 85 Stat. 807.

(4) No wage rates provided under any agreement entered into under this subsection shall be lower than the applicable minimum wage for the particular work concerned.

(D) that the Secretary may terminate any agreement under this subsection at any time.

(f) Before entering into a project under section 632(b)(3) of this title, the Secretary shall have reasonable assurances that–

(1) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

(2) such project will not result in the displacement of employed workers,

(3) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant,

(4) appropriate workmen's compensation protection is provided to all participants.

(g) Where an individual, certified to the Secretary of Labor pursuant to section 602(a)(19)(G) of this title refuses without good cause to accept employment or participate in a project under a program established by this part, the Secretary of Labor shall (after providing opportunity for fair hearing) notify the State agency which certified such individual and submit such other information as he may have with respect to such refusal.

(h) With respect to individuals who are participants in public service employment under the program established by section 632(b)(3) of this title, the Secretary shall periodically (but at least once every six months) review the employment record of each such individual while on such special work project and on the basis of such record and such other information as he may acquire determine whether it would be feasible to place such individual in regular employment or on any of the projects under the programs established by section 632(b)(1) and (2) of this title.

§634. Incentive payments and allowances for transportation and other costs

(a) The Secretary is authorized to pay to any participant under a program established by section 632(b)(2) of this title an incentive payment of not more than $30 per month, payable in such amounts and at such times as the Secretary prescribes.

(b) The Secretary of Labor is also authorized to pay, to any member of a family participating in manpower training under this part, allowances for transportation and other costs incurred by such member, to the extent such costs are necessary to and directly related to the participation by such member in such training.

§635. Federal assistance

(a) Federal assistance under this part shall not exceed 90 per centum of the costs of carrying out this part. Non-Federal contributions may be cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(b) Costs of carrying out this part include costs of training, supervision, materials, administration, incentive programs, transportation, and other items as are authorized by the Secretary, but may not include any reimbursement for time spent by participants in work, training, or other participation in the program.

§636. Period of enrollment

(a) The program established by section 632(b)(2) of this title shall be designed by the Secretary so that the average period of enrollment under all projects under such program throughout any area of the United States will not exceed one year.

(b) Services provided under this part may continue to be provided to an individual for such period as the Secretary determines (in accordance with regulations prescribed jointly by him and the Secretary of Health, Education, and Welfare) is necessary to qualify him fully for employment even though his earnings disqualify him from aid under a State plan approved under section 602 of this title.

§637. Relocation of participants

The Secretary may assist participants to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employable and self-supporting. Such assistance shall be given only to participants who concur in their relocation and who will be employed at

their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transportation for participants, their dependents, and their household belongings plus such relocation allowance as the Secretary determines to be reasonable.

§638. Participants not Federal employees

Participants in programs established by this part shall be deemed not to be Federal employees and shall not be subject to the provisions of laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

§639. Rules and regulations

The Secretary and the Secretary of Health, Education, and Welfare shall, not later than July 1, 1972, issue regulations to carry out the purposes of this part. Such regulations shall provide for the establishment, jointly by the Secretary and the Secretary of Health, Education, and Welfare, of (1) a national coordination committee the duty of which shall be to establish uniform reporting and similar requirements for the administration of this part, and (2) a regional coordination committee for each region which shall be responsible for review and approval of statewide operational plans developed pursuant to section 633(b) of this title.

§641. Evaluation and research

The Secretary shall (jointly with the Secretary of Health, Education, and Welfare) provide for the continuing evaluation of the work incentive programs

established by this part, including their effectiveness in achieving stated goals and their impact on other related programs. He also may conduct research regarding ways to increase the effectiveness of such programs. He may, for this purpose, contract for independent evaluations of and research regarding such programs or individual projects under such programs. For purposes of sections 635 and 643 of this title, the costs of carrying out this section shall not be regarded as costs of carrying out work incentive programs established by this part. Nothing in this section shall be construed as authorizing the Secretary to enter into any contract with any organization after June 1, 1970, for the dissemination by such organization of information about programs authorized to be carried on under this part.

N.Y. Soc. Serv. L. §131(4):

4. No assistance or care shall be given to an employable person who has not registered with the nearest local employment agency of the department of labor or has refused to accept employment in which he is able to engage.

A person shall be deemed to have refused to accept such employment if he:

a. fails to obtain and file with the social services district at least semi-monthly a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

b. willfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

c. willfully fails to report to such office the result of a referral to employment, or

d. willfully fails to report for employment. Such willful failures or refusal as above listed shall be reported immediately to the social services district by such employment office.

For the purposes of this subdivision and subdivision five, a person receiving or applying for home relief shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of a minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person and the appropriate social services department to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed. For the purposes of this subdivision and subdivision five, a person receiving or applying for aid to dependent children shall be deemed employable in accordance with the provisions of section three hundred fifty-e of this chapter, except that a mother who is unable to work by her need to provide full-time care for her children, and for whom required care is not otherwise reasonably available notwithstanding diligent efforts by such mother and the appropriate social services department to provide such care shall not be deemed employable.

Every employable recipient of public assistance who is not engaged in regular full-time employment shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department.

Notwithstanding section three hundred fifty-e or any other provisions of this chapter, the provisions of this subdivision shall apply to applicants for or recipients of aid to dependent children until such time as they are enrolled and participating in the Work Incentive Program.

Such regulations may provide for including the full amount of any shelter allowance in one of the semi-monthly grants and allowances made to such an employable recipient of public assistance.

N.Y. Soc. Serv. L. §350-e:

§350-e. Registration and certification; work incentive programs

1. In accordance with federal requirements and this title and the regulations of the department, every individual, as a condition of eligibility for aid under this title, shall register for manpower services training and employment with the state department of labor or other appropriate agency under the work incentive program unless such individual is:

(a) a person who is ill, incapacitated or of advanced age;

(b) a person who resides so far from any of the projects under the work incentive programs that he cannot effectively participate under any of such programs;

(c) a child or minor attending school full time;

(d) a person whose presence in the home is required because of the illness or incapacity of another member of the household;

(e) a mother or other relative of a child under the age of six who is caring for the child, provided that such person shall be advised of her option to register if she so desires and shall be informed of the child care services which will be available to her in the event she should decide so to register; or

(f) the mother or other female caretaker of a child, if the father or another adult male relative is in the home, is employable, and is in full compliance with all of the registration, training and employment requirements of this section.

2. A social services district shall, if and as long as federal aid is available therefor, provide such social and supportive services, in accordance with regulations of the department, as are necessary to enable employable individuals to accept employment or receive manpower training under this subdivision and shall, when such services including child care had been made available, certify to the department of labor those individuals who are ready for employment or training under the work incentive program in accordance with an order of priority established by federal requirements. Such certifications of fathers of dependent children who are eligible for aid to dependent children in accordance with the provisions of paragraph one-a of subdivision B of section three hundred forty-nine, shall be made within thirty days after receipt of aid with respect to such children. When more than one kind of child care is available, a mother who has registered may choose the type, but may not refuse to accept child care services.

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL., APPELLANTS

v.

DOLORES DUBLINO, ET AL.

No. 72-802

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL., APPELLANTS

v.

DOLORES DUBLINO, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the three-judge district court (J.S. App. A)[1] is reported at 348 F. Supp. 290.

[1] "J.S." refers to the jurisdictional statement in No. 72-792.

JURISDICTION

The judgment of the district court (J.S. App. B, 41–43) was entered on August 25, 1972. An order amending the judgment (J.S. App. C) was entered on October 18, 1972. Notice of appeal was filed by appellants in No. 72–792 on September 28, 1972, and by appellants in No. 72–802 on October 5, 1972. The jurisdictional statement in No. 72–792 was filed on November 29, 1972 and in No. 72–802 on December 1, 1972. This Court on January 15, 1973, postponed the question of jurisdiction until a hearing on the merits.[2]

QUESTION PRESENTED

The United States will discuss the following question: Whether a State may, independently of the federal work incentive program, require individuals to accept employment as a condition of eligibility for federally-funded aid to families with dependent children.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Article VI, cl. 2 of the Constitution in pertinent part provides:

> This Constitution, and the laws of the United States * * * shall be the supreme Law of the Land * * *.

The pertinent provisions of Section 402(a) of the Social Security Act of 1935, 42 U.S.C. (Supp. I) 602(a), are set forth at Mot. to Aff. 3–6.

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[2] The jurisdictional question presumably arises from the fact that the jurisdictional statement in No. 72–792 was filed out of time under Rule 13 of the Rules of this Court.

Section 131(4) of the New York Social Services Law (52A McKinney's Cons. Laws § 131(4)) is set forth at J.S. 5–6.

Sections 164 and 350(k) of New York Social Services Law (52A McKinney's Cons. Laws §§ 164 and 350(k)) are set forth at J.S. App. E, 49–53.

INTEREST OF THE UNITED STATES

Pursuant to Sections 401–410 of the Social Security Act of 1935, 42 U.S.C. 601–610, the United States provides for a public assistance program of aid to families with dependent children ("AFDC"). This program is jointly financed by the states and the federal government and is administered by the individual states. A state need not participate in this program. If a state chooses to participate, it submits a plan of administration to the Secretary of Health, Education, and Welfare; if the plan satisfies the requirements of Section 402(a), the Secretary approves the plan. The federal government then provides certain matching grants-in-aid to the state.

The AFDC plan of New York requires, as a condition of eligibility, that individuals register for and accept employment. The Secretary has approved the plan as consistent with Section 402(a), and New York receives federal funds for the operation of its plan. Substantially similar plans of other states have also been approved and are in operation.

In this suit, appellees challenge New York's compliance with Section 402(a). This challenge calls into question the correctness of the Secretary's interpretation of the Act. The outcome of this case may affect

the operations of AFDC plans in many states as well as the future administration of federal assistance under the Act.

STATEMENT

Appellees, seeking declaratory and injunctive relief, brought this suit challenging the constitutionality of certain New York statutes and regulations known collectively as the New York Work Rules.[3] These Work Rules establish a presumption that certain AFDC[4] recipients are employable,[5] and they "require such recipients to report semi-monthly to the New York State Employment Service to pick up their assistance checks and accept referral to employment positions, including employment on public works projects" (J.S. App. A, 21–22). Failure to comply with the Work Rules results in termination of the AFDC benefits

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[3] The statutes involved are Sections 131(4), 164, and 350(k) of the New York Social Services Law (52A McKinney's Cons. Laws §§ 131(4), 164, 350(k)). These statutes are amplified by New York Department of Social Services Administrative Letters 71 PWD–34 and 71 PWD–43 (J.S. App. A, 34–37).

[4] The Work Rules also affect certain recipients of state welfare programs not federally assisted. The district court upheld the application of the Work Rules to those programs, and that ruling is not before the Court in this case.

[5] The Work Rules include as presumptively employable all persons between the ages of 16 and 64 except for reason of "illness or significant and substantial incapacitation * * *; full-time attendance at school in the case of a minor * * *; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children and for whom required care is not otherwise reasonably available * * *." Section 131(4) of the New York Social Services Law.

of the non-complying recipient. Section 131(4) of the New York Social Services Law.

Appellees contended, *inter alia*,[6] that the Work Rules violated Section 402(a)(10) of the Social Security Act of 1935, 42 U.S.C. 602(a)(10), and that the Work Rules were in any event pre-empted by the analogous federal work incentive program ("WIN"), contained in Sections 402(a)(19) and 430–444 of the Act.[7] The district court, relying primarily on *Carleson* v. *Remillard*, 406 U.S. 598, and *Townsend* v. *Swank*, 404 U.S. 282, concluded that any independent state condition on AFDC eligibility violates the prescription in Section 402(a)(10) that participating states (see p. 3, *supra*) must provide aid "to all eligible individuals" and that the Work Rules were therefore invalid.

The district court then compared the Work Rules with WIN, found certain differences between them, and concluded that "[t]he comprehensive intent and

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[6] Certain other constitutional challenges were rejected by the district court and are not before this Court in this case.

[7] The federal work incentive program is similar to the New York Work Rules. Section 402(a)(19) makes registration for participation in WIN a condition of eligibility for receipt of AFDC benefits. Under the program, recipients are referred to the Secretary of Labor for job training and placement; the only recipients excused from participation are children under the age of 16 and persons who are "ill, incapacitated, or of advanced age, * * * [individuals] * * * remote from a work incentive project * * *, [children] attending school full time, or * * * [individuals] whose presence in the home is required because of illness or incapacity of another member of the household [and relatives caring for children] under the age of six." Section 402(a)(19) of the Act, 42 U.S.C. (Supp. I) 602(a)(19). Compare note 5, *supra*.

language of WIN, as well as its legislative history, clearly support the proposition that, for those in the AFDC program, WIN preempts the Work Rules program" (J.S. App. A, 28).[8] The court permanently enjoined enforcement of the New York Work Rules against AFDC recipients.[9]

SUMMARY OF ARGUMENT

The issue presented by this case is whether Section 402(a)(10) of the Social Security Act of 1935, 42 U.S.C. 602(a)(10), bars a state from independently requiring individuals to accept employment as a condition of eligibility for federally-funded aid to families with dependent children. Analytically, this issue may be divided into two separate questions: (1) whether Section 402(a)(10) permits states to implement welfare policies required by the necessities of administration or designed to further basic federal and state welfare purposes, and (2) whether the enactment in 1967 of the federal work incentive pro-

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[8] The court cited no legislative history.

[9] As a matter of first impression, the propriety of this relief would appear questionable, even assuming the court to have been correct on the merits. The state AFDC plan must satisfy the requirements of Section 402(a) in order to qualify for federal funding, but the state may operate an AFDC plan without federal funding if it chooses to do so. Thus, if the state plan does not comply with Section 402(a)(10), the appropriate remedy would appear to be termination of federal funding rather than judicial rewriting of the plan. However, this Court in such cases as *Carleson* v. *Remillard*, *supra*, apparently has assumed that the Secretary's approval of a state plan imposes on the state a continuing requirement of compliance which may be enforced by a court of equity. The statutory basis for this assumption is unclear.

gram described in Section 402(a)(19) was intended entirely to displace even those state work programs which supplement, and do not conflict with, the operation of the federal program.

The historical practice and understanding under the Act have been that states may independently impose eligibility conditions, so long as those conditions do not directly contravene the congressional specification, in Sections 406 and 407, of broad categories of individuals deserving assistance. This is true both of eligibility conditions arising out of administrative necessity (*Wyman* v. *James*, 400 U.S. 309) and of those which proceed from independent state policies which are consistent with the federal programs. *Snell* v. *Wyman*, 281 F. Supp. 853 (S.D.N.Y.), affirmed, 393 U.S. 323. Pursuant to this general understanding concerning the scope of state authority to impose eligibility conditions, almost half the states have instituted AFDC work programs.

The federal work incentive program does not prevent the states from imposing supplementary work requirements. Congress has long accepted the existence of state AFDC work programs prior to 1967, and in enacting the federal WIN program it said nothing to indicate prospective disapproval of the state programs. Furthermore, WIN has not been implemented on state-wide bases, nor has it been adequately funded to serve all AFDC recipients living in the areas in which it does operate. More extensive state programs should not be deemed pre-empted by a partially developed federal program. Furthermore,

the New York work program is virtually identical in substance to WIN, and it does not apply to individuals enrolled and participating in WIN. Thus the New York Work Rules serve only to supplement, and do not interfere with, WIN. Such supplementary state work programs further the congressional interest in work incentives and should be sustained.

ARGUMENT

A STATE MAY REQUIRE INDIVIDUALS TO REGISTER FOR AND ACCEPT EMPLOYMENT AS A CONDITION OF ELIGIBILITY FOR FEDERALLY-FUNDED AID TO FAMILIES WITH DEPENDENT CHILDREN

The court below viewed this case as presenting two issues: (1) whether the New York Work Rules deny aid to "eligible individuals" within the meaning of Section 402(a)(10) of the Social Security Act, 42 U.S.C. 602(a)(10), and (2) whether state work programs have been pre-empted by the federal work incentive program described in Section 402(a)(19) of the Act. Although the federal definitional provisions of Section 406 and 407 are mandatory on the states, absent a contrary expression of congressional intent, we submit that the states have been left free to impose additional eligibility conditions unrelated to the specific federal definitions and that the Work Rules are consistent and in harmony with both the underlying purpose of AFDC assistance and the operation of the federal work incentive program.

A. THE STATES MAY IMPOSE ADDITIONAL AFDC ELIGIBILITY CONDITIONS UNRELATED TO FEDERAL REQUIREMENTS

The federal AFDC eligibility standards are set forth generally in Sections 406 and 407 of the Act. It is well established that a state AFDC plan, in order to satisfy the requirement of Section 402(a)(10), must not violate those federal standards absent contrary congressional intent "clearly evidenced from the Social Security Act or its legislative history." *Townsend* v. *Swank*, 404 U.S. 282, 286. State attempts to narrow specific federal eligibility standards have been held to violate Section 402(a)(10). See *Carleson* v. *Remillard*, 406 U.S. 598 (state attempt to narrow the federal definition of a parent's "continued absence"), *Townsend* v. *Swank*, *supra* (state attempt to narrow the federal definition relating to age and school attendance requirements for "dependent children"), and *King* v. *Smith*, 392 U.S. 309 (state attempt to narrow the federal definition of "parent"). Thus the states must look to federal law for standards determining the general class of individuals to whom the AFDC program applies as expressed in the definitional provisions of the Social Security Act.

Yet the AFDC program is administered by the states, not by the federal government, and this Court has acknowledged the right of the states to impose additional eligibility conditions required by adminis-

trative necessity or justified by underlying state welfare purposes. In *Wyman* v. *James,* 400 U.S. 309, the Court upheld a state statute making home visits by a welfare caseworker a condition of eligibility for AFDC benefits, even though, as the Court expressly noted (400 U.S. at 319), such visits are "not required by federal statute or regulation." This result was proper. In assuming the responsibility of administering the AFDC program, the states are entitled to impose requirements reasonably related to that responsibility; and the home visits, or inspections, sanctioned by *Wyman* v. *James* assist the state in determining whether applicants for AFDC in fact satisfy all applicable federal eligibility requirements.

Similarly, the states are entitled to implement important state welfare policies by imposing other eligibility conditions, so long as they do not contravene the federal policies inherent in the federal eligibility definitions. Thus a state could not, consistently with Section 402(a)(10), enforce a policy of giving aid only to families with pre-school dependent children; but a state may, for example, condition AFDC eligibility on the applicant's acceptance of an obligation to reimburse the state out of certain after-acquired assets. See *Snell* v. *Wyman,* 281 F. Supp. 853 (S.D.N.Y.), affirmed, 393 U.S. 323. Such an eligibility condition is not a matter of administrative necessity, but it does express a fundamental state judgment that limited state welfare funds should be permanently expended only on behalf of those truly in need and that self-reliance and civic responsibility are values which pub-

lic welfare programs should promote; this is consistent with the federal AFDC program, which anticipates that the states will develop potential sources of income and resources for recipients. See Section 402 (a)(7) of the Act.

Section 402(a)(10) should not be read, and has not in the past been read, to bar all eligibility conditions based on such independent state judgments. By delegating welfare administration to the states, Congress anticipated not a rigid federal program in which the states would serve a purely ministerial function, but rather a system that allows for considerable state program flexibility.

The New York Work Rules are best understood in this context. Like the reimbursement requirement upheld in *Snell* v. *Wyman*, the Work Rules express an important state policy judgment with respect to the purpose of public welfare. The considerations underlying the enactment of the Work Rules are described more fully by appellants (Br. 8–10), but the essential policy judgment, briefly stated, is that public welfare should provide employment rehabilitation as well as financial support. This judgment is consistent with the basic congressional purpose of assisting AFDC recipients "to attain or retain capability for * * * maximum self-support and personal independence * * *." 42 U.S.C. 601. And the Work Rules do not contravene the mandatory definitional provisions of the Act.

The historical understanding under the Social Security Act has been that the states may implement their individual public welfare policies in adminis-

tering federally-funded programs, so long as their policies are in harmony with expressed federal purposes and do not take the form of *de facto* amendments to the federal definitional provisions. Pursuant to this understanding, 21 states imposed welfare work requirements, as a condition of AFDC eligibility, prior to the enactment of the federal work incentive program in 1967, and these state programs were all approved by the Secretary.[10] As we will now show, nothing in the 1967 amendments to the Act was intended to invalidate these state work programs.

B. THE FEDERAL WORK INCENTIVE PROGRAM (WIN) DOES NOT BAR THE STATES FROM IMPOSING WORK REQUIREMENTS AS CONDITIONS OF ELIGIBILITY

1. WIN was not intended to displace existing State Work Programs or to inhibit development of new programs

It has been the policy of the Secretary of Health Education, and Welfare to approve state plans containing work requirements as conditions of AFDC eligibility, as long as the requirements are not arbitrary or unreasonable. The existence of such state work requirements was well known, yet Congress did nothing to cast doubt on the propriety of that consistent administrative practice. To the contrary, Congress from time to time expressed an interest in having the states encourage AFDC recipients to seek and accept employment.

[10] This information is derived from a survey of state plans conducted by the Department of Health, Education, and Welfare.

For example, in 1962 Congress established the community work and training program (see 42 U.S.C. 609), which permitted the states to make AFDC payments in the form of wages for public employment rather than as unconditional welfare benefits. In doing so, Congress recognized that participation in such a work program could be made a condition of AFDC eligibility by the states:

> If a state plan is approved, assistance could be denied if the individual refuses without good cause to take the word offered [H. Rep. No. 1414, 87th Cong., 2d Sess., at 15.]

Similarly, in extending AFDC coverage to families with unemployed parents Congress indicated that the states not only were entitled to impose work requirements but were expected to do so:

> * * * an unemployed individual whose family is receiving aid under this program should accept any reasonable offer of employment. * * * The State would determine whether the parent had good cause for refusing an offer of employment. [S. Rep. No. 165, 87th Cong., 1st Sess., at 3.]

The enactment of the federal work incentive program in 1967 should be considered in the context of this widespread and long-standing acceptance of state AFDC work requirements. By 1967, Congress had become convinced of the desirability of an AFDC work program but concerned over the suspected inadequacy of state work requirements. (At that time, only 21 states had fully developed work programs. See p. 12,

supra. Twenty-three states now have supplementary work programs.[11]) Congress therefore enacted the federal work incentive program to establish a set of minimum federal work requirements, but in doing so it expressed no intention to nullify co-existing state programs. See S. Rep. No. 744, 90th Cong., 1st Sess., at 26, 145–157; H. Rep. No. 1030, 90th Cong., 1st Sess., at 58–59. Furthermore, when Congress amended WIN in 1971, it expressed no intention of limiting or eliminating state work programs. Thus there is no evidence of a congressional design to preempt the field of AFDC work requirements, and "[t]he most plausible inference from the legislative scheme is that the Congress contemplated that state power to enact such [requirements] should remain unimpaired." *Florida Avocado Growers* v. *Paul,* 373 U.S. 132, 152.

Furthermore, the degree and manner of the implementation of the WIN program have not been consistent with the district court's theory of federal preemption. Unlike the New York Work Rules, the WIN program has not been put into effect throughout the entire state but only in selected areas, and this pattern of limited federal work program coverage is found in other states as well. Section 432(a) of the Act recognizes that WIN is not intended to be all-embracive since it requires the establishment of work incentive programs only in those state political subdivisions with the greatest need; in New York, WIN has been placed

[11] This information was supplied by the Department of Health, Education, and Welfare.

in operation in only 12 of 64 social service districts. See J.S. 15–16. The limited extent of WIN coverage can only be reconciled with the expressed congressional concern over the need for more extensive job training and employment opportunities by recognizing that WIN was not intended to be exclusive. WIN provides a basic, minimal AFDC work program which the states may, at their option, supplement and assist.

This point is further illustrated by the limited reach of WIN even in those areas where it operates. WIN has not been funded adequately to provide work assistance to all, or even to any substantial portion, of the individuals referred to the Secretary af Labor by the state. It is estimated that the current level of WIN funding is such that no more than one-fifth of the WIN registrants will receive the full job training and placement assistance contemplated by the Act.[12] Thus the great majority of WIN registrants will receive only minimal services.

In New York, for example, there are expected to be 150,000 registrants in the current fiscal year, but the Secretary of Labor has contracted with the state to provide services to only 90,000 registrants, of whom probably the majority will not receive full job training and placement assistance.[13] Congress could not have intended this partial federal program to pre-empt all state work programs. To the

[12] Compare U.S. Department of Labor, *Management Information Report*, p. 2 (June 30, 1972) with the budget of the United States, fiscal year 1974, Appendix, p. 443.

[13] U.S. Department of Labor, Manpower Administration, contract No. 36–2–0001–188, modification No. 3, June 30, 1972.

contrary, the statutory basis and the appropriations provided for WIN implementation are inconsistent with a pre-emptive legislative intent.

2. Joint enforcement of WIN and the New York Work Rules frustrates no federal purpose

The court below acknowledged that the New York Work Rules and the federal work incentive program seek "a similar end" but apparently held the Work Rules invalid because the two programs employ "different means" (J.S. App. A, 27). But "[t]o hold that a state statute identical in purpose with a federal statute is invalid under the Supremacy Clause, [a court] must * * * conclude that the purpose of the federal statute would to some extent be frustrated by the state statute." *Colorado Anti-Discrimination Commission* v. *Continental Airlines, Inc.*, 372 U.S. 714, 722. As we will now show, there is no distinction in substance between WIN and the Work Rules, they are compatible with one another, and their joint enforcement frustrates no federal purpose.

Both WIN and the Work Rules provide that AFDC benefits shall be withheld from an employable person who has refused to register for or accept employment in which he is able to engage. The state and federal criteria of employability are virtually identical. See notes 5 and 7, *supra*. The Work Rules do not apply to AFDC recipients who "are enrolled and participating in the Work Incentive Program." New York Laws of 1972, ch. 941, Section 1. Thus the Work Rules

only supplement, and do not interfere with, the operation of the federal work incentive program.

Appellees apparently attack the Work Rules on the very ground that they supplement WIN. But supplementary state work programs further the Congressional interest in work incentives. Such programs strengthen the overall system of AFDC work incentives by extending the availability of job training and placement assistance to those individuals whom WIN does not or cannot reach at its current level of funding and implementation. The fact that AFDC recipients not affected by WIN are subject to the Work Rules is evidence only of the need for and effectiveness of such supplementary state programs.

Appellees' principal remaining contention (Mot. to Aff. 25–28) seems to be that procedural or remedial differences between WIN and the Work Rules require invalidation of the latter.[14] These minor differences

[14] Appellees also contend (Mot. to Aff. 35–37) that by amending WIN in 1971 Congress acceded to the decision in *Woolfolk v. Brown*, 325 F. Supp. 1162 (E.D. Va.), affirmed *per curiam*, 456 F. 2d 652 (C.A. 4), certiorari denied, 409 U.S. 885, holding the Virginia AFDC work requirements to be pre-empted by WIN. But the appeal in *Woolfolk* was pending when Congress acted, Congress intimated no awareness of the district court judgment, and congressional acquiescence in even an intermediate appellate judgment may never be lightly inferred.

were described by the court below (J.S. App. A, 27–28): the screening procedures for determining employability are allegedly more elaborate under WIN; failure to comply with referral may be subject to a slightly longer suspension of benefits under the work rules; WIN provides counseling prior to termination for refusal to participate whereas the Work Rules do not. We see no reason why these minor differences, standing alone, should affect the validity of the Work Rules.[18]

In summary, we believe that state work programs which impede the operation of the federal work incentive program may be partially or wholly invalid but that those state programs which serve only to supplement the WIN program should be sustained. We believe Congress has permitted the states to provide work incentives for AFDC recipients who are not participating in WIN, and this is what New York has done.

---

[18] Of course, the Work Rules procedures must satisfy basic due process requirements, but we see no basis in the statute for requiring state adherence to WIN procedures, whether statutory or administrative in origin. But even assuming state work programs must adopt federal procedures and remedies in their entirety, this would mean only that certain non-conforming features of the Work Rules were invalid; the validity of the Work Rules themselves would not be affected by minor procedural or remedial discrepancies.

CONCLUSION

For the foregoing reasons the judgment of the district court should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, *et al.*,
Appellants,
against
DOLORES DUBLINO, *et al.*,
Appellees.

No. 72-802

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES, *et al.*,
Appellants,
against
DOLORES DUBLINO, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR APPELLANTS NEW YORK STATE DEPARTMENTS OF SOCIAL SERVICES AND LABOR AND THEIR COMMISSIONERS

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

REPLY BRIEF ON BEHALF OF STATE APPELLANTS

This brief is submitted on behalf of the New York State Department of Social Services and Labor and their Commissioners in reply to the brief of the appellees.

Summary of Argument

It is submitted that appellants have misinterpreted both the terms of the Social Security Act and the intention of Congress in enacting it. From an examination of subsequent amendments and even the most recent amendments to the Federal Act (the Talmadge Amendments) and recent comments of members of Congress, it is apparent that Congress did not intend to preempt the field of work requirements or to prevent the States from adopting their own requirements.

Furthermore, the legislative history of the Social Security Act clearly demonstrates that Congress intended to provide the States with considerable latitude in setting eligibility requirements for public assistance and that among the eligibility requirements so contemplated were State work requirements.

ARGUMENT

I

The appellees in their brief have misconstrued both the purpose and scope of New York State's work referral program and the Federal Social Security Act.

This point is directed in reply to specific statements in the brief of the appellees which appellants contend have misconstrued the purpose and scope of the work referral program of the New York Social Services Law and of the Federal Social Security Act in order to reach their desired conclusion that there is an irreconcilable conflict between the two statutes.

Initially, it must be observed that one of the main sources of the disagreement between the parties to this action is a

difference in outlook in relation to the statutes involved and the ends sought to be obtained. We submit that the statutes must be kept in perspective in order to properly evaluate the contentions of the parties.

Congress has never *specifically* stated that the Work Incentive Program (WIN) is to preempt State work statutes or programs, nor has it stated specifically that those public assistance recipients who are not enrolled in WIN may not be required by the States to participate in any State work or training programs.

Furthermore, it must be remembered that the State and local officials whose testimony is part of this record all agreed that under the New York work referral program *all* public assistance recipients who are eligible for WIN and for whom slots or funding is available are referred to and participate in the WIN Program and WIN procedures apply to them. There are, however, recipients who are not so included, either because there is no WIN project in their area, by decision of the United States Secretary of Labor, or for whom no WIN position is available, because of inadequate funding by the Congress or inadequate allocation of positions by the Secretary of Labor, or because they are classes of recipients who are not required to participate in WIN. Those not included in WIN are within the work referral requirements of section 131(4) of the New York Social Services Law, and State procedures apply to them. Thus, differences in procedures between WIN and State social services regulations are immaterial and irrelevant to the sole question raised on this appeal, that is, whether the Federal Act has preempted the State's power to act in this field. Consequently, the extensive discussion in the appellees' brief concerning differences in procedures has no application to the issues in this appeal.

The difference in perspective between the parties to this case is apparent in a consideration of appellees' arguments concerning the 1971 amendments to the Social Security Act (the so-called Talmadge Amendments). On page 8 of their brief, appellees point to the penalty provisions of the amendment, pursuant to which States are penalized by a reduction of Federal assistance for failure to certify to the WIN program at least 15% of the average number of registrants in each year (42 U. S. C., § 603[c]). This 15% provision, appellees contend, demonstrates a Congressional intent to occupy the entire field of work-training programs. On the other hand, it must be noted that Congress recognized that 85% of the *registrants* (as opposed to recipients) might be excluded from participation in WIN for some reason. We submit that Congress could not have intended that those 85% must therefore be excluded from any kind of work requirement, if the State is willing to develop its own work referral program.

Appellees also contend that the placing of registered mothers in the lowest priority category for WIN placement was intended to "protect" them from compulsory certification until all other categories had been placed (appellees' brief, p. 8). This contention is directed toward an argument that the State's program, by establishing no such priority list, is harsh and burdensome as to ADC mothers and is in conflict with the Federal Act. Actually, neither the word "protect" or any synonym for it appear in the remarks of Senator Talmadge referred to in appellees' brief (117 Cong. Rec. 20569 [Dec. 4, 1971]). His statements may just as easily be taken to mean that the priorities are geared to assuring that the Federal program any money are used to assure that those public assistance recipients best able to work, most obligated to do so and who can be placed in employment quickest and with least supportive cost, are put to work first.

WIN's objective, like that of New York's work referral program, is employment. The 1971 amendments emphasized that factor and all the procedural steps provided under that program are geared to the end of employment alone. If a recipient is job-ready at the time he is registered for the WIN program and if, while waiting for a WIN position to open up, a job can be developed for him under a State program, then WIN's objective has also been fulfilled.

Appellees emphasize the development of an employability plan for each WIN participant, as if it were some unique asset of the WIN program. Actually it must be remembered that those plans are developed by the staff of the State Employment Service, the same agency which places recipients under the State work referral program, and that the manpower services of that office are also available and provided, when necessary, to persons referred under the State's program.

Congress, in attempting to establish nationwide guidelines, set relatively rigid categories of persons who are subject to compulsory referral to WIN. The State's program, operating on a smaller scale, can be more flexible in reaching the same objectives. For example, WIN exempts a mother of a child under 6 years of age from registering; the State's program exempts mothers of children of any age for whom day care is not available or who are needed in the home to care for children. Thus, under the State's program a mother having no children under 6 may be exempted from referral on the basis that her presence in the home is necessary to the physical or psychological well-being of her children. Both statutes consider the same factor, although from different angles—that is, the need of a mother in the home. Thus, there is in reality no conflict between the Federal and State statutes in this regard.

Consequently, appellees incorrectly state that under the State's program a mother is exempt only if day care is not available (p. 20).

Similarly, appellees have over-simplified the physical incapacity exemption, by stating that only those are exempt whose illness or incapacity prevents them from "performing services", implying, of course, harassment of the sick and disabled. Yet it is perfectly obvious that many people have chronic illnesses which do not keep them from gainful employment. A person with chronic sinus inflammation, for example, is able to work in almost any employment; a person with arthritis may be employable in many occupations without discomfort. Under the State's program, such people would be considered employable in work which they are physically able to perform, as they would be under the WIN program.

The priorities established in the Talmadge Amendments are, we submit, a clear Congressional demonstration that the Federal Act is not intended to be all inclusive. If Congress had intended that the WIN program would be capable of placing all public assistance recipients, no scale of priorities for registration and placement would have been necessary. The very setting of priorities demonstrates the limited scope of the WIN program. Senator Talmadge's remarks, quoted at page 21 of appellees' brief, demonstrate the basic purpose for establishing priorities, as well as the penalty provisions under the 1971 amendments. Some of the States simply were not referring sufficient numbers of people to WIN. The amendments were intended to require the States to participate to the fullest extent possible under the Act. While the figures for placements demonstrate that New York has been so participating in the past, it is also apparent that the WIN program's scope has not been

all inclusive in the past and, we submit, is still not under the 1971 amendments.

One final comment concerning the dichotomy in the views taken of the WIN program *vis-a-vis* the State's work referral program is apparent in appellees' quotation from the District Court decision in the *Woolfolk* case (325 F. Supp. 1162 [1971], affd. 456 F. 2d 652, cert. den. ____ U. S. ___), cited at page 32 of appellees' brief. Appellants in the instant case have taken the position that the exemption from registration for the WIN program of persons "too remote" to participate did not apply to persons residing in areas where no WIN project has been established, and, thus, even under an inclusive interpretation of the WIN statute, State programs as to those recipients should be permissible. The Disctrict Court's opinion in *Woolfolk*, as quoted above by appellees, also apparently construes the remoteness provision to refer only to recipients residing in an area where a WIN project has been established, the Court holding that a determination as to remoteness required an individual determination as to each recipient rather than as to a certain area. Individual determinations would not be necessary if the remoteness provision applied to areas where no WIN project was established.

Appellees have, we submit, misconstrued both the scope and intent of the Federal Social Security Act. In so doing, they read into it an intention to preempt the field of work referral, an intention which actually is not present in the statute, nor was it present in the minds of the Congressmen who enacted it. In the Congressional Record for October 17, 1972, specific statements appear by the chairmen of the appropriate Congressional committees disclaiming any intent to prohibit State work referral programs. Senator Long was chairman of the Finance Committee of the Senate

when the WIN statutes were enacted. As to the intention of the Senate, he stated (S 18493):

> "It was never our intention to prevent a State from requiring recipients to do something for their money if they were employable. It seems to me reasonable that they should be asked to do something for the money. It would be far better to do something for the money than nothing at all."

In the House, Congressman Carey of New York is reported as stating that it was his understanding "that Congress intended, through the WIN program, merely to assist the States in the critical area of guiding able-bodied welfare recipients toward self-sufficiency—and not to supersede individual State programs designed to achieve the same end." Wilbur Mills, chairman of the House Ways and Means Committee, specifically agreed that that was the proper interpretation of the intent of the Congress in enacting the WIN program (H 10212).

We submit, therefore, that the proper interpretation of the Federal Social Security Act provisions is, as we have contended, that the act does not by its terms intend to preempt the entire field of work referral for ADC recipients nor did Congress intend such preemption by its enactment of the WIN program.

II

New York's work referral program does not constitute an additional condition of eligibility for public assistance. In any event, additional conditions of eligiblity not inconsistent with the Social Security Act are not prohibited by that Act.

Appellees contend that New York's work referral program creates an additional condition of eligibility and that such conditions are prohibited by the Social Security Act and the decisions of this Court. It is the State's position here that a work requirement does not constitute an additional condition of eligibility and that, in any event, since work requirements are consistent with the intent and purpose of the Social Security Act, they are neither specifically prohibited by that act nor did Congress intend that they be prohibited.

It is clear from an examination of the Social Security Act that a basic purpose of the ADC program has been to encourage work. The preamble clause to Title IV has, since 1962, explicitly set forth as a purpose of the program the aim of helping

> "parents or relatives to attain or retain capability for * * * maximum self-support and personal independence * * *" (42 U. S. C., § 601).

Moreover, it is patent that the capacity to work is related to the problem of the need of an individual for public assistance, and, therefore, that a work requirement *per se* would not be inconsistent with the purposes of the Act. Thus, income from earnings has been considered by the Department of Health, Education and Welfare to be an important potential source of income which the States may legitimately require the recipient to develop in accordance with the statutory mandate to explore and consider all

available resources. The Congress has itself recognized the importance and desirability of work as an element of the ADC program, as will be discussed in detail later in this brief.

We submit that the permissibility of work requirements is in no way inconsistent with 42 U. S. C., § 602(a)(10), which requires that a State ADC plan must provide that aid "shall be furnished with reasonable promptness to all eligible individuals". It is significant to note in this regard that the Department of Health, Education and Welfare, which administers the Social Security Act, takes the position that the term "eligibile individuals" means those persons eligible under the approved *State* plan, that State work requirements are not inconsistent with the Social Security Act, and that such requirements are permitted under the Act (see, *e. g.*, Brief of United States of America, *amicus curiae* herein and District Court Brief of HEW in *Woolfolk* v. *Brown, supra*). It is submitted that, this interpretation should be entitled to the weight and deference due the agency charged with the administration of the Act (*Lewis v. Martin*, 397 U. S. 552 [1970]; *Rosado* v. *Wyman*, 397 U. S. 397 [1969]).

In *King* v. *Smith* (392 U. S. 309 [1968]), this Court stated that 42 U. S. C., § 602(a)(9), (now 602(a)(10)) and 42 U. S. C. § 606(a) in combination "clearly require participating States to furnish aid to families with children who have a parent absent from the home, if such families are in other respects eligible" (392 U. S., p. 317). The Court examined in detail the intended Congressional meaning of the term "parent" as used in 42 U. S. C., § 606 (a) and concluded that children deprived of the support or care of such a "parent" could not be denied ADC "on the transparent fiction that they have a substitute father." (392 U. S., p. 334) However, this Court did not there

specifically hold and we do not read *King* as establishing by implication the proposition that all children who come within the definition of "dependent child" under 42 U. S. C., § 606(a) must *ipso facto* be considered eligible for purposes of 42 U. S. C., § 602(a)(10). Section 606(a) establishes only a matching definition, setting forth the limits of Federal financial participation. Some States, for instance, make payments for all needy children, including those of the working poor, but Federal matching is available only with respect to the children who come within the terms of 42 U. S. C., § 606(a). Moreover, it is clear that the Congress, in enacting 606(a) and amending it from time to time, intended to leave many options to the States in covering groups of children, *e.g.*, in relation to age, school attendance, and relatives with whom the child is living. Thus, the State may make assistance payments to broader groups or narrower groups than are described in 606(a). In short, 606(a) and 602(a)(10) are not properly to be read as coextensive.

Similarly, 42 U. S. C., § 602(a)(10) does not stand for the proposition, as some would contend, that States cannot impose eligibility conditions other than those specifically authorized by the Social Security Act. Instead, the entire history and pattern of Title IV and the other public assistance titles of the Act show the opposite approach, namely, that if the State plan complies with all of the conditions specified by the Act, the Secretary of Health, Education and Welfare shall approve the plan, and the State may also include under the plan, and have approved by the Secretary, other eligibility conditions if they are not inconsistent with the purposes and provisions of the Act (see, *Wyman v. James*, 400 U. S. 309 [1971]). Work requirements are also an eligibilty condition which States may impose. There is nothing in the language or history

of 602(a)(10) to support the notion that it reverses what is otherwise obvious and inherent in the structure and provisions of the Act and the Federal-State relationship thereby created, or that it nullifies any option the States might otherwise have to impose work requirements.

This Court has rendered opinions in three cases ruling on the validity of State eligibility standards (*King* v. *Smith, supra; Townsend* v. *Swank,* 404 U. S. 282 [1971]; and *Carleson* v. *Remillard,* 406 U. S. 598 [1972]). Additionally, in the so-called NOLEO cases, this Court has summarily affirmed three District Court decisions involving NOLEO provisions (*Taylor* v. *Martin,* 330 F. Supp. 85 [N. D. Calif., 1971], affd. *sub nom. Carleson* v. *Taylor,* 404 U. S. 980; *Meyers* v. *Juras,* 327 F. Supp. 759 [D. Ore., 1971], affd. 404 U. S. 803, reh. den. 404 U. S. 961; and *Doe* v. *Swank,* 332 F. Supp. 61 [N. D. Ill., 1971], affd. *sub nom. Weaver* v. *Doe,* 404 U. S. 987).

In *Townsend,* discussing its prior holding in *King,* the Court stated (404 U. S., p. 286):

> "Thus, *King* v. *Smith* establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause."

The other ground of decision in *King* and *Townsend* is that a State eligibility standard must yield to the provisions of 42 U. S. C., § 602(a)(10) that aid be furnished "to all eligible individuals".

We shall demonstrate herein, however, that (A) neither the Social Security Act nor its legislative history foreclose the creation of State requirements for eligibility for ADC,

and (B) the provision of section 602(a)(10) that aid be furnished "to all eligible individuals" when read within the context of the Social Security Act means individuals "eligible" under State requirements, not Federal.

The legislative history of the Social Security Act of 1935 demonstrates that the States may set up eligibility requirements of their own. Section 602(a) sets forth the requirements of a State plan for aid and services to needy families with children. Section 602(b) then states the curious requirements that "The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section except that he shall not approve any plan which imposes as a *condition of eligibility* • • •" certain residency requirements (emphasis added). If all of the standards of eligibility are contained in 602(a) and the States have no option to establish additional standards, the prohibition against certain residency requirements contained in subdivision (b) would be unnecessary. From the face of the statute, therefore, it appears that Congress did not intend to foreclose the States from imposing additional standards of eligibility.

The Social Security Act of 1935 itself dealt with residency requirements and the precursor of section 602(b) was a part of the original Act. As to that requirement, the report of the House Ways and Means Committee (No. 615 of 1935) stated:

> "(b) Liberality of residence requirement: No residence requirement shall be imposed which results in the denial of aid with respect to an otherwise eligible child, if the child was born in the State within the year, or has resided in the State for at least a year immediately preceding the application for aid. The State may be more lenient than this, if it wishes. *It may, furthermore, impose such other eligibility requirements—as to means, moral character, etc.—as it sees fit.* No State is required to give aid to nonresidents." (Emphasis added).

The Report of the Senate Finance Committee (Report No. 628 of 1935) was to the same effect. Clearly, therefore, the framers of the Social Security Act of 1935 thought that it was for the States to establish requirements of eligibility. In *King* v. *Smith, supra,* this Court recognized that the 1935 House and Senate Reports indicated "that States participating in AFDC were free to impose eligibility requirements relating to the 'moral character' of applicants" (392 U. S., p. 322) but held that the so-called "worthy person doctrine" no longer applied to contemporary conditions, and in *Shapiro* v. *Thompson* (394 U. S. 618 [1968]), this Court relied upon the "liberality of residence requirement" set forth in the House and Senate Committee Reports as support for its decision invalidating residency requirements in AFDC cases.

To the best of our knowledge, however, this Court has not dealt directly with the intent and meaning of the reports of the Senate and House Committees, quoted above, in their entirety. We submit that such an examination can only lead to the conclusion that Congress, at the time of the enactment of the Social Security Act, intended to permit the States to establish conditions of eligibility in addition to those prescribed in the Act and limited only by the express prohibition in 602(b).

The history of the Social Security Act since 1935 only serves to reinforce that conclusion.

Pursuant to 42 U. S. C., § 607, enacted in 1961, a State, at its option, was permitted to obtain Federal financial assistance under its ADC program for aid furnished to children who were needy because of the unemployment of a parent, as distinguished from the absence of a parent from the home. That section, as amended in 1962 (P. L. 87-543), provided that a State ADC plan which included

families with unemployed parents must provide for cooperative arrangements with the State public employment offices looking toward employment of such parents and must further provide that ADC will be denied to the family if, and for as long as, the unemployed parent refuses without good cause to accept employment in which he is able to engage which is offered through the State employment service or is otherwise offered by an employer, if the offer is determined by the social services agency, after notification by the employer, to be a bonafide offer of employment (42 U. S. C. § 607(b)(2)). The plan must further provide for cooperative arrangements with the State vocational education agency to encourage retraining of unemployed parents, and must provide for the denial of ADC to the family if, and for as long as, the unemployed parent refuses without good cause to undergo any such retraining (42 U. S. C. § 607(b)(3)).

Although with the unemployed parents legislation, the Congress clearly moved directly into the area of work requirements, no statutory provision or administrative interpretation prevented the States from setting their own standards for requiring work as a condition of eligibility. The latitude left to the States in formulating and administering work requirements under the ADC program was made clear in the Senate Report on the Unemployed Parents provision (No. 165, 87th Congress, 1st Sess. [1961], page 3):

> "Your committee's bill, as does the House-passed bill, requires that a State agency administering the expanded aid to dependent children program must enter into cooperative arrangements with the State agency administering the public employment offices looking toward the employment of the unemployed parents of the children receiving aid. The arrangements which the State public assistance agency will need to

have with the employment service must include provisions for appropriate registration for work and periodic registration of the unemployed parent of a child and for otherwise making maximum utilization of job placement services and other services and facilities of the employment office. The purpose of this provision is, so far as possible, to secure employment for the unemployed person in any jobs that may be available which there is not good cause for him to refuse, as determined by the State.

"Your committee believes that an unemployed individual whose family is receiving aid under this program should accept any reasonable offer of employment. Accordingly, the bill would require that a State plan include provisions to assure that aid is not provided if, and for as long as, the unemployed parent refuses without good cause to accept employment in which he is able to engage. Considerable latitude would be left to the State in determining the period during which assistance would be denied. It is not intended to permanently disqualify the family during subsequent periods when no offer of employment is available. The State would determine whether the parent had good cause for refusing an offer of employment.

"The State agency would have considerable latitude in determining what constitutes a bona fide offer of employment, but it is intended that aid be denied if an individual refuses a bona fide offer of employment which the State determines he should have accepted."

The enactment of the Unemployed Parents provision (ADC-U) was not considered by HEW to pre-empt the area of work requirements or to limit the States' latitude to impose work requirements on other ADC applicants or recipients. Even today, only about half the States have chosen to implement this provision, as amended, the ADC plans of the other States are unaffected by any Federal work requirement from this source. Even for those States which have implemented the ADC-U provision, the requirements of 42 U. S. C. § 607, although clearly setting

out conditions which the State plan must include, are located in a different part of the Social Security Act than the conditions specified in 602 and relate to a separable segment of the State's ADC program. Nevertheless, the Unemployed Parent provision established a precedent that a Congressionally imposed work requirement did not preempt the field, but rather exhibited Congressional concern that ADC applicants and recipients should obtain employment, where appropriate. The effect was to reinforce, rather than weaken, the States' options in imposing work requirements.

The Congress also specifically directed itself to the question of work as a condition of eligibility for ADC in legislation establishing the Community Work and Training Programs, first authorized by the Public Welfare Amendments of 1962 (P. L. 87-543, 42 U. S. C. § 609). That legislation provided for Federal sharing in State payments to ADC recipients in return for participation in the Community Work and Training Program. While not requiring that the States make work a condition of eligibility for ADC, the Federal legislation implicitly recognized the propriety of requiring work under the program as a State-imposed eligibility condition for ADC. See especially 42 U.S.C. § 609(a) (1) (G), which provided that:

> "aid under the plan will not be denied with respect to any such relative (or the dependent child) for refusal by such relative to perform any such work if he has good cause for such refusal. * * *."

More specifically, the House Report on the legislation provided that (No. 1414, 87th Cong., 2nd Sess. [1962], p. 15):

> "If a State plan is approved, assistance could be denied if the individual refuses without good cause to take the work offered."

Here, too, the effect of the Congressional action was to reinforce the States' latitude in imposing work requirements not only in regard to the Community Work and Training programs but also in relation to private sector employment.

At the time of the 1967 amendments, there was an unbroken history since enactment of the Social Security Act of 1935 whereby States had the option of imposing work requirements as a condition of eligibility for ADC. The only Federal requirement of this type was explicity contained in 42 U. S. C. § 607 relating to unemployed parents. There was no Federal prohibition against imposition of such requirements by the States. Rather, the several factors already discussed pointed consistently to State discretion in this area. The general pattern and provisions of Title IV of the Social Security Act gave latitude to the States in the absence of express Federal limitation. Congressional enactments, far from prohibiting State-imposed work requirements, both explicity and implicity recognized the propriety of such provisions.

The 1967 amendments were thus enacted against the background that about 14 States imposed work requirements beyond those imposed on unemployed parents by the Congress. The validity of such requirements was also upheld judicially. In *Anderson* v. *Burson* (300 F. Supp. 401 [N. D. Ga., 1968]), plaintiffs attacked Georgia's work requirement applicable to ADC mothers and also its provision that full-time employment of the mother makes the family ineligible even though the earnings do not meet the family's need. The Court found for the plaintiffs on the full-time employment issue and for the State on the work requirement issue (300 F. Supp., p. 404):

> "That portion of the 'employable mother' regulation which provides that a mother must accept suitable employment, assuming adequate safeguards to the mother

and her children, such as the availability of adequate child care plans and other such limitations, does not violate any of the plaintiffs' constitutional or statutory rights, *there being no federally protected right of a mother to refuse employment while receiving assistance and remaining at home with her children.*" (Emphasis supplied.)

Under the Social Security Amendments of 1967 (P. L. 90-248), the Congress first established mandatory work requirements for ADC recipients as part of the general ADC program. It added, as one of the specific conditions for approval of the State plan and payment of Federal funds, the requirement that the State and local welfare agencies must provide for the prompt referral of appropriate recipients (and certain volunteers) to the Secretary of Labor for participation under the Work Incentive Program (42 U. S. C. § 602 (a)(19)(A)). The Act contains detailed provisions as to circumstances under which an individual is not appropriate for referral, the effect of participation in the WIN program on ADC payments, the sanctions to be imposed if a referred individual refuses without good cause to participate in the WIN program or to accept employment and other matters.

It is clear from both the provisions and history of the 1967 Amendments that Congress intended to emphasize more strongly than ever before the importance of employment as an essential element of a State public assistance program. Perhaps more importantly here, however, there is no provision which would indicate that Congress intended by this legislation to preempt the tremendously large field of employment for public assistance recipients or to attempt to provide a total substitute for State work programs and requirements.

The Work Incentive (WIN Program established under Title IV of the Act (42 U. S. C. § 630 *et seq.*) is an extensive, although far from all-inclusive, work program. That the Congress did not intend that the program be all-inclusive is evident from a number of factors. First, the Federal act clearly implies the limited scope of the program by specifying that the Secretary of Labor shall establish WIN programs.

> "in each State and in each political subdivision of a State in which he determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children." (42 U. S. C. § 632(a).)

The statute further provides that:

> ". . . In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established." (42 U. S. C. § 632(a).)

Under a related provision, a person otherwise appropriate for referral shall not be referred if he is

> "so remote from any of the projects under the work incentive programs . . . that he cannot effectively participate under any of such programs." (42 U. S. C. § 602(a)(19)(A)(v).)

It is submitted that this language demonstrates that it was not contemplated by the Congress that the Work Incentive Program even though extensive in scope, would include within its purview the entire AFDC program. That the program is not all inclusive is demonstrated in appellants' main brief in that it exists in only 12 of New York's Social Services districts.

The obvious limitations in scope evident in the statutory language, when viewed in the light of the repeatedly expressed intent of Congress to curb the expansion of the welfare rolls at least in part by employment, would seem to lead inexorably to the conclusion that the Congress did not intend the WIN program to be exclusive of State work provisions.

In addition to establishment of the WIN Program and the State plan requirement that certain individuals be referred to the WIN program, the 1967 Social Security Amendments contained other provisions relating to work. The general purpose of helping parents and caretaker relatives to attain or retain capability for maximum self-support and personal support (42 U. S. C. § 601) was to be advanced by specific requirements of social service activities. The State ADC plan must provide for development and application of a program of family services for each parent or caretaker relative to assist such individual to attain or retain capability for self-support (42 U. S. C. § 602(a)(14)). More specifically, under 42 U. S. C. § 602(a)(15), the State ADC plan must provide

> "(A) for the development of a program for each appropriate relative and dependent child receiving aid under the plan, with the objective of—
>
> "(i) assuring, to the maximum extent possible, that such relative, child, or individual will enter the labor force and accept employment so that they will become self-sufficient,
>
> "(B) for the implementation of such programs by—
>
> "(i) assuring that such relative, child, or individual who is referred to the Secretary of Labor pursuant to clause (19) is furnished child care services."

It is obvious that the services requirements in relation to work under 42 U. S. C. 602 (a)(14) and (15) apply to a

broader segment of the ADC population than the requirement of referral to the WIN Program under 42 U. S. C. 602 (a)(19). The assurance of child care services under 42 U. S. C. 602 (a)(15)(B)(i), above, to those referred to the WIN Program is only one of the work-related services to be furnished to *some* of the individuals to be affected by 42 U. S. C. 602 (a)(14) and (15).

Accordingly, the Federal regulations implementing 42 U. S. C. 602 (a)(15) require the States to provide an extensive range of work related services to all in the ADC caseload who might benefit therefrom (45 CFR 220.17).

> "(a) Child care services, including in-home and out-of-home services, must be available or provided to all persons referred to and enrolled in the Work Incentive Program *and to other persons for whom the agency has required training or employment.* Such care must be suitable for the individual child, and the parents must be involved and agree to the type of care to be provided. Such services must be maintained until the person is reasonably able to make other satisfactory child care arrangements." (Emphasis added.)

As a basis for the continued State option to impose work requirements, in addition to those under the WIN Program, as a condition of eligibility for ADC, perhaps the most telling aspect of the 1967 Amendments is the fact that the Congress did not change the basic pattern of Title IV of the Social Security Act. If the State ADC plan provides for referral of individuals to the WIN Program, and imposes penalties for refusal of referred individuals to participate in such a program or to accept employment, as provided in 42 U. S. C. § 602 (a)(19), and if the State plan provides for work-related services for the broader group of individuals covered under 42 U. S. C. § 602 (a)(15), the Secretary "shall approve" the plan. (42 U. S. C. § 602 (b)). The State has fulfilled the conditions specified

by the Social Security Act. There is nothing in the Act, and no indication of Congressional intent, that would preclude the State from imposing work requirements as a condition of eligibility in ADC.

Thus, the 1967 Amendments reflect an increased Congressional concern that ADC recipients should work if possible. The imposition of new statutory requirements on work and services only set a minimum which all States must observe. Beyond that, the States at their option may prescribe other requirements. At some point, perhaps, or in some respects, such State requirements might conflict with Federal requirements and, if so, they would not be acceptable. As a general proposition, however, the climate of the 1967 Amendments favored the latitude given to the States regarding work requirements beyond these under the WIN Program. To all of the pre-1967 factors, which remained unchanged,—the pattern of the Act, the purpose clause, the provisions on need and on consideration of income and resources—was added the evident Congressional preoccupation with work. In this vein, over 20 States impose work or training requirements in addition to those applicable to the WIN Program as a condition of eligibility for ADC.

Furthermore, the legislative history of the amendments to the Social Security Act of 1967 (P. L. 89-97, [1968], P. L. 90-248 and 1969 P. L. 91-41) shows the inability to discern a Congressional intention of pre-emption as regards the ADC provisions of the Social Security Act.

A provision of the 1967 amendments which found its way into law was former 42 U. S. C. § 603 (d), since repealed, which added a provision limiting Federal financing for the largest ADC category—where the parent is absent from the home—to the proportion of each State's total child population receiving ADC in that category.

Chairman Wilbur Mills of the House Ways and Means Committee, in his remarks during debate on that amendment, stated (Cong. Rec., August 17, 1967, p. 23055):

> "This provision, we believe, would give the States an additional incentive to make effective use of the constructive programs which the bill would establish. Moreover, this limitation on Federal matching will not prevent any deserving family from receiving aid payments. The States would not be free to keep any family off the rolls to keep within this limitation because there is a requirement in the law that requires equal treatment of recipients and uniform administration of a program within a State."

Chairman Mills, it is noted, relied on the provisions of the Act itself in expounding the effect upon the States of the "freeze". As to that freeze, the remarks of then Secretary of Health, Education and Welfare, John W. Gardner, inserted in the Congressional Record, show that he disagreed with Chairman Mills as to the effect of the freeze, for he stated:

> "Something we did not ask for and did get was the ceiling which the Committee placed on the AFDC program. The proportion of children on the rolls because of the absence or desertion of a parent would be frozen as of the proportion obtaining in January of this year. I will recommend to the Senate deletion of the provision.
>
> "Under the House amendment, the Federal Government would be foreclosed from sharing in the support of children whose condition is precisely the same as that of children already being assisted. *The States would be encouraged—virtually forced—to establish even more restrictive eligibility requirements,* or else to lower the already inadequate support being paid." (Emphasis added.)

The passage of time shows that the so-called "freeze" provisions were about to have some unintended effects.

The pendency of *Shapiro* v. *Thompson, supra,* concerning the residency requirements, and *King* v. *Smith, supra,* concerning the man-in-the-house requirements, meant that in the event the residency and man-in-the-house requirements were held invalid a considerable number of people would be added to the ADC rolls in the States for whom no Federal participation would be available under the freeze provisions. Thus, in 1969, the implementation of the freeze was postponed for one year (P. L. 90-364).

For purposes of clarity, we refer to the repeal of the freeze by Public Law 91-41 and to Senate Report No. 91-223 submitted in connection therewith, as well as the Conference Report No. 91330 (see 1969 United States Code Congressional and Administrative News, pp. 1051 through 1055, inclusive).

The Senate report is set out as Appendix A to this Brief. That Report sets out the history of the 1968 legislative action concerning the "freeze" and the reticence of the House conferees to repeal the limitation. Also contained in that Report is a provision contained in the 1968 litigation tying special provisions authorizing increases in ADC rolls to a decision by a Court of the United States on the issue of the validity "under the United States Constitution, of any law, rule, regulation, or policy of a State under which aid to families with dependent children is denied to individuals otherwise eligible therefor because of * * *" failure to meet duration of residency requirements or because of the relationship between a male individual and the mother of the child or children with respect to whom such aid is sought.

The Senate report also contains the rather remarkable statement that:

> "At the time the conferees acted, it was anticipated that the Supreme Court would soon rule on the duration of residence and man-in-the-house cases, and that the decisions, if they ruled out these eligibility requirements, would be based on constitutional grounds. However, only [the man-in-the-house case was decided] and that ruling was made on statutory rather than constitutional grounds."

It is at once apparent that the decision of this Court, grounded as it was upon the provisions of the Social Security Act and the Court's findings as to legislative intent, came as a complete surprise to the members of the Congress. See also as to the 1968 amendments, House Report No. 1014, 1968 United States Code Congressional and Administrative News, p. 2341 at 2361, 2362, the Conference Report No. 1523, *id.* p. 2373 at 2395 and 2396.

Senator George A. Smathers, Ranking Majority Member of the Senate Committee on Finance, in explaining the Conference Report on the 1968 extension of the freeze stated (1968 United States Code Congressional and Administrative News, p. 2428):

> "The limitation on aid to families with dependent children, known as the 'AFDC freeze' is postponed for 1 year to allow time for effective implementation of the work incentive program designed to guarantee training and jobs for appropriate AFDC recipients.
>
> "Equally important, the conference agreement makes special provision for adjusting the AFDC limitation in those States whose eligibility requirements are affected by court decisions. This is particularly appropriate in view of the recent Supreme Court decision striking down the so-called man-in-the-house rule."

See also Senator Smather's remarks at *id.*, p. 2409.

Where Congress has intended to impose limitations on eligibility, it has done so expressly. For example, when

the provisions of section 602(a)(15), relating to the furnishing of family planning services, were inserted in 1967, it was expressly stated that the acceptance of such services "shall not be a prerequisite to eligibility for or the receipt of any other service or aid under the plan." See also section 602(a)(15), as amended, providing that acceptance of such services "shall not be a prerequisite to eligibility for or the receipt of any other service under the plan."

In 1971, the work incentive provisions of section 602(a)(19) were amended to provide an inclusion "that every individual, as a condition of eligibility for aid under this part, shall register for manpower services * * *." The earlier provisions of subdivision 19 had merely provided for the referral to the Secretary of Labor of an "appropriate" person. Registration was made a condition of eligibility because Congress was dissatisfied with the application by the States of standards of "appropriateness" (See remarks of Senator Talmadge, Congressional Record—Senate, December 4, 1971, p. 20569, and Chairman Mills, Congressional Record—House, December 14, 1971, p. 12450).

One final quote from the 1935 debate on the adoption of the Social Security Act is appropriate here. Congressman Vinson of Kentucky there stated (Cong. Record, April 17, 1935, p. 5897):

> "We have had many Federal grants in aid to States, but let me say to the House—and this is a statement that cannot be contradicted—that the powers under this bill that rest in the State are greater than those resting with the States in any other statue granting aid to States. Perhaps I should put it the other way around and say that under this bill there is less Federal power to be exercised in the administration of the act than in any grants-in-aid statutes on the books. We

made it a point to preserve the rights of the States. You will find that in the question of administration the selection, the tenure, the salary, all that went with personnel, is left to the States.

"There is no yardstick laid down in this bill by the Federal Government with respect to the aged who will get the benefits under title I. The States have that power; it is theirs under the Constitution of the United States. No effort was made to deprive them of it. One State may have one yardstick, and a second State may have another yardstick; only subject to the age limit of 65 or 70, up to 1940, the question of 5 years' residence within the States during the preceding 9 years, the last year of which must have been spent in the State immediately prior to time the application was made; and thirdly, that no citizen of the United States can be excluded from the provisions of the act."

We submit to this Court that the work requirement of the New York statute here at issue is not an additional condition of eligibility inconsistent with the purposes of the Social Security Act. Moreover, the intent of Congress has consistently been to provide great latitude to the States to establish additional conditions of eligibility supplementary to the purpose of the Social Security Act and State work requirements have always been considered as permissible supplementary conditions.

CONCLUSION

The judgment appealed from should be reversed and judgment granted holding the New York work rules constitutional and valid.

Dated: April 11, 1973.

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APPENDIX A

CHICORY ROOTS—SUSPENSION OF DUTY—SOCIAL SECURITY

P. L. 91-41, see page 56

House Report (Ways and Means Committee) No. 91-160, Apr. 23, 1969 [To accompany H. R. 8644]

Senate Report (Finance Committee) No. 91-223, May 29, 1969 [To accompany H. R. 8644]

Conference Report No. 91-330, June 26, 1969 [To accompany H. R. 8644]

Cong. Record Vol. 115 (1969)

DATES OF CONSIDERATION AND PASSAGE
House May 13, June 27, 1969
Senate June 19, 30, 1969

The Senate Report and the Conference Report are set out.

Senate Report No. 91-223

* * *

REPEAL OF LIMITATION ON FEDERAL PARTICIPATION IN AID TO FAMILIES WITH DEPENDENT CHILDREN

During its consideration of the Social Security Amendments of 1967, the House Ways and Means Commitee recommended a major new approach to the reduction of dependency in the program of aid to families with dependent children. The basic features of the new approach included work training, work incentives through earnings exemptions, and day care for the children of working

mothers. To insure that States would rapidly implement this major new program, the committee placed a limitation on Federal participation in aid to families with dependent children. The limitation, which would have become effective in January 1968, was related to the proportion of children who were receiving AFDC because of the absence of a parent from the home.

The Senate Committee on Finance endorsed the basic approach of the House bill—the reduction of dependency through employment—but it proposed a broader and more comprehensive work incentive program. The committee felt that in view of these major changes, it was no longer necessary to place a limitation on Federal participation in AFDC. The Senate version of the social security amendments contained no such limitation.

While the House conferees were unwilling to have their limitation deleted, they did agree to delay its effective date until July 1, 1968.

As signed into law, the Social Security Amendments of 1967 placed a limitation on Federal participation in aid to families with dependent children (the "AFDC freeze") related to the percentage of the child population under age 18 receiving welfare because of the absence of a parent from the home. The percentage this type of child represented of the total child population was to be calculated during the base period (January to March 1968). For each calendar quarter beginning July 1968, the "freeze percentage" was to be multiplied by the child population on the previous January 1 to determine the total number of children receiving AFDC because of an absent parent for whom there would be Federal matching. The limitation thus

allowed for an upward adjustment only once annually, in recognition of the growth of the State's total child population. Despite the limitation, the States would still be required under Federal law to provide assistance promptly to every needy child meeting the State's eligibility standards—but the entire cost of assistance to children in excess of the limit would be borne by the States and localities, with no Federal matching.

In 1968, the Senate again voted to repeal the AFDC freeze as an amendment to the bill which became the Revenue and Expenditure Control Act of 1968. At that time, litigation in several States (related to duration of residence requirements and the eligibility of families to receive assistance when there was a man in the house not married to the mother of the family) threatened to modify State eligibility requirements and add substantial numbers of new AFDC recipients to the rolls. At the same time, Federal funds had not even been appropriated to initiate the work incentive program.

The House conferees again refused to repeal the limitation. They did agree to postpone the effective date for 1 year (until July 1, 1969) and to make special provision for increases in the AFDC rolls by the second quarter of calendar year 1969 as the result of—

> any decision by a court of the United States of competent jurisdiction in any case or controversy in which there is decided the issue of the validity, under the United States Constitution, of any law, rule, regulation, or policy of a State under which aid to families with dependent children is denied to individuals other-

wise eligible therefor because of failure to meet duration of residence requirements or because of the relationship between a male individual and the mother of the child or children with respect to whom such aid is sought.

At the time the conferees acted, it was anticipated that the Supreme Court would soon rule on the duration of residence and man-in-the-house cases, and that the decisions, if they ruled out these eligibility requirements, would be based on constitutional grounds. However, only and that ruling[1] was made on statutory, rather than constitutional grounds.

It was not until April 21, 1969, that the Court handed down a decision that would force States to eliminate eligibility requirements based on length of residence. This decision was made on constitutional grounds. Last year's decision affected 18 States; this year's would affect some 40 States.

The Department of Health, Education, and Welfare has estimated that an increase in the AFDC rolls ranging from 200,000 to 400,000 recipients might result from the elimination of the man-in-the-house rule; another 100,000 to 200,000 AFDC recipients might be added to the rolls as a result of the elimination of duration-of-residence eligibility requirements.

For the most part, under present law there would be no Federal participation on behalf of the children added to the rolls as the result of the Supreme Court's decisions. Children added who would have formerly been ineligible under a man-in-the-house rule are not covered by the special

provision added to the law last year, since the Court's decision was made on statutory rather than constitutional grounds. Last year's special provision was aimed at adjusting the AFDC limitation to take into account cases added because of court decisions; the added cases were to be measured in the second quarter of 1969. But since the Court's decision on duration-of-residence eligibility requirements was not made until April 21 of this year, most additional cases relating to this decision will be added to the rolls after the second quarter of 1969, and will be in excess of the freeze limitation.

There is another important consideration. The basic purpose of the original House limitation was to provide a strong incentive for the States to move rapidly to implement the work incentive program. Neither the Federal administrators nor the States have done so. Implementation of the program has been so slow that the new administration was able to reduce the budget requests for the work incentive program by $35 million simply on the grounds that the funds could not be used.

The Department of Health, Education, and Welfare estimates that the limitation in existing law would reduce Federal participation in AFDC by $322 million in fiscal year 1970.

For these reasons, the committee recommends a third time that the limitation on Federal participation be deleted.

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MICHAEL RODAK, JR., C

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

Nos. 72-792
72-802

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, *et al.*,
Appellants

and

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES and its Commissioner, JOHN L. LASCARIS,
Intevenors-Appellants,

-against-

DOLORES DUBLINO, *et al.*,
Appellees.

BRIEF OF APPELLEES IN RESPONSE TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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Supreme Court Rule 41 1

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BRIEF OF APPELLEES IN RESPONSE TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

PRELIMINARY STATEMENT

Appellees ("Plaintiffs") submit this brief in accordance with Rule 41, in response to the Brief for the United States as *Amicus Curiae*, which was filed on April 3, 1973, after Plaintiffs' brief in chief was filed in this Court.

ARGUMENT

I.

In the face of the overwhelming evidence of preemptive intent contained in the legislative history of WIN (See Brief of Appellees at 27-37), *Amicus Curiae* United States (hereafter the "*Amicus*") cites but two examples of the fact that "Congress from time to time expressed an interest in having the states encourage AFDC recipients to seek and accept employment." Brief of the United States at 12-13. One alleged example of this Congressional concern is the community work and training program (Soc. Sec. Act §409, 42 U.S.C. §609), which permitted the states to create "work relief" programs for AFDC recipients. Brief of the United States at 13. Significantly, the *Amicus* neglects to mention that the provisions of §409 were *repealed*, by the same legislation in which Congress created WIN! See Pub. L. 90-248, §204(c)(2), 81 Stat. 892 (1968); see also, discussion in Brief *Amici Curiae* of National Welfare Rights Organization *et al.* (hereafter "NWRO Brief"), at 28-29.

Similarly, the *Amicus points to a committee report concerning the creation of the AFDC-U program* (42 U.S.C. §607), without discussing the fact that Congress in 1967 completely altered the focus of AFDC-U by requiring referral of all AFDC-U recipients to WIN within 30 days. See Pub. L. 90-248, §203(a), 81 Stat. 883 (1968); Brief of Appellees at 43; NWRO Brief at 29, 36.

In short, these purported examples of Congressional "interest" in continued state programs merely emphasize the fact that Congress in enacting WIN in 1967 fundamentally changed its approach to work programs for AFDC recipients, by creating an exclusive and com-

prehensive federal program which precluded state activity in this field.

Apparently realizing the insufficiency of its legislative history argument, the *Amicus* seeks to discern Congressional intent in enacting WIN from the manner of implementation of WIN subsequent to its enactment. Apart form the fact that subsequent history of WIN would seem irrelevant to the question of prior Congressional intent, there is nothing in the Brief of the United States which can overcome Plaintiffs' arguments in this regard.

On the contrary, there is every indication that Congress in 1967 expected that WIN would be fully capable of serving the employment needs of all appropriate AFDC recipients:

> "... [I]t is anticipated that virtually all individuals who are referred to the Secretary of Labor by the welfare agencies will participate in the Program."
>
> S. Rep. 744, 90th Cong., 1st Sess. (1967), at 148.

Later, Congress recognized that certain inadequacies in the 1967 WIN program prevented realization of this Congressional goal; it thus reaffirmed its commitment to WIN as the exclusive compulsory work program for AFDC recipients, by enacting the 1971 Amendments to WIN. See discussion, Brief of Appellees at 21-22; NWRO Brief at 56-58.

Pursuant to the 1971 Amendments, New York's WIN Program can be expected to service all employable AFDC recipients within a reasonable period of time. *Amicus* indicates that "there are expected to be 150,000 registrants in the current fiscal year, but the Secretary of Labor has contracted with the State to provide services to only 90,000 registrants." Brief of the United States at 15.

It must first be noted that in the initial year of implementation, *current* recipients of AFDC are being required to register; once that process is completed, the only *new* registrants will be those registered upon their entry onto the AFDC rolls, and those current recipients whose circumstances have changed.

Since at any one time only approximately 32% of the AFDC caseload consists of recipients who entered the rolls within one year,[1] and since many registered recipients presumably will become exempt through changed circumstances, the number of registrants for WIN can be expected to decline rapidly as the initial registrants are processed through WIN. Moreover, since the State Defendants candidly concede that they will only be able to register 75,000 recipients in the first year [Brief of State Defendants at 17], while the Department of Labor expects to be able to service 90,000 recipients [Brief of United States at 15], it is obvious that WIN will be able to service at least all registrants in the current year.[2]

Yet all this is beside the point; the goal of WIN is not to process as many people as possible as quickly as possible. Providing WIN services to AFDC recipients as required by Congress naturally takes time. Congress has exercised its judgment to require provision of such services, calculated to render recipients truly employable. See Brief of Appellees at 18. New York cannot, in the guise of "supplementing" WIN, deny those services to WIN registrants.

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[1] See N.Y. State Department of Social Services, "Characteristics of ADC Families in New York State," Program Analysis Report No. 50 (1972), at 14.

[2] It bears repeating once again that while in New York WIN is in operation in "only" 12 of 64 Social Services districts [see Brief of the United States at 15], these districts contain 93% of all AFDC recipients. See NWRO Brief at 56 n. 29.

II.

The *Amicus* denies the existence of any conflict with or frustration of WIN through implementation of the New York Work Rules. Apparently aware that it could find no support there for its view, *Amicus* completely ignores the record below. The Work Rules' frustration of the WIN Program has been extensively discussed in the Brief of Appellees (see pages 15-27), and there is no need to restate those conflicts here. Appellees can only add that to characterize the New York Work Rules' mandatory 30 day denial of assistance as a "minor difference," only "slightly longer" (Brief of the United States at 17-18) than the sanction imposed under WIN [see 42 U.S.C.A. §602(a)(19)(F)], is strange indeed. In those cases in which the AFDC recipient elects immediate compliance with WIN, "slightly longer" is thirty days longer to be precise—there is no minimum penalty in WIN; denial of assistance is only for ". . . so long as . . ." [42 U.S.C.A. §602(a)(19)(F)] there is a refusal to comply. This Court has recognized the "desperate" situation of a recipient of public assistance denied benefits, *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970); when viewed in that light, the mandatory 30 day penalty is harsh indeed.

III.

In asserting the Work Rules' conformity with 42 U.S.C. §602(a)(10), the *Amicus* takes a position which this Court has specifically disapproved in other cases involving state-imposed conditions of eligibility for AFDC:

"In *Townsend*, we also expressly disapproved the Department of Health, Education and Welfare

(HEW) policy *which permitted States to vary eligibility requirements from the federal standards without express or clearly implied congressional authorization." Carleson v. Remillard*, 406 U.S. 598, 606 (1972); see also *Townsend v. Swank*, 404 U.S. 282, 286 (1971). (Emphasis supplied.)

The policy of HEW which this Court specifically rejected in *Townsend* and *Carleson* was embodied in the so-called "Condition X," or "equitable treatment" regulation, 45 C.F.R. §233.10(a)(1)(i), (ii):

"(a) *State plan requirements.* A State plan under Title I, IV-A, X, XIV, or XVI, of the Social Security Act must:

"(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. Under this requirement:

"(i) States have substantial latitude and corresponding responsibility for determining the coverage, nature and scope of their public assistance programs. Although the public assistance titles define the coverage in which the Federal Government will participate financially, a State may provide coverage on a broader or more limited basis. However, it may not impose any eligibility condition that is prohibited under the Social Security Act.

"(ii) The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act."

Notwithstanding this Court's rejection of "Condition X," *Amicus* seeks to achieve an identical result by

drawing an artificial distinction between "State attempts to narrow specific federal eligibility standards" [Brief of the United States at 9] and "the right of the states to impose additional eligibility conditions required by administration necessity or justified by underlying state welfare purposes" [Brief of the United States at 9-10]. The latter are allegedly permissible, "so long as they do not contravene the federal policies *inherent in the federal eligibility standards.*" Brief of the United States at 10. To put it more bluntly, the *Amicus* takes the position that state-imposed eligibility conditions are to be presumed valid unless they contravene policies "inherent" in federal eligibility standards, a position rather less rigorous than that enunciated by this Court:

> "[A]t least in the absence of Congressional authorization for the exclusion *clearly evidenced* from the Social Security Act or its legislative history, a *state eligibility standard that excludes persons eligible for assistance under federal AFDC standards* violates the Social Security Act and is therefore invalid under the Supremacy Clause."
>
> *Townsend v. Swank*, 404 U.S. 282, 286 (1971). (Emphasis supplied.)

There is no indication in any of the cases dealing with §602(a)(10) that the purported distinction of the *Amicus* has any validity. On the contrary, the eligibility conditions imposed by the New York Work Rules are logically indistinguishable from those imposed in *Townsend* and *Carleson*. In all of these cases persons "eligible" for assistance by the terms of the Social Security Act are denied assistance on the basis of eligibility conditions not authorized by Congress.[3]

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[3]This Court's decision in *Wyman v. James*, 400 U.S. 309 (1971), cannot be read as a limitation on *Townsend* and *Carleson*. Though *James* was decided on strictly constitutional grounds, see

The *Amicus* does not treat the so-called "NOLEO" (Notice to Law Enforcement Officers) cases: *Taylor v. Martin*, 330 F.Supp. 85 (N.D. Cal.), *aff'd sub nom. Carleson v. Taylor*, 404 U.S. 980 (1972); *Doe v. Swank*, 332 F.Supp. 61 (N.D. Ill.), *aff'd sub nom. Weaver v. Doe*, 404 U.S. 987 (1971); *Meyers v. Juras*, 327 F.Supp. 759 (D. Ore.), *aff'd* 404 U.S. 803 (1971). These cases are ignored because they do not fit the Amicus' attempt to construct a theoretical distinction between the narrowing of the class of eligibles and the imposition of additional requirements. In each of these cases, states sought to deny or terminate assistance upon a mother's refusal to take action to recover support or establish paternity for her abandoned child. In each case the eligibility condition was enjoined because it was not authorized by the Social Security Act, and in each case this Court affirmed. A situation more closely analogous to this case would be

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400 U.S. at 338 (dissent), this Court, in engaging in the balancing of interests required in Fourth Amendment cases, cited a great deal of evidence that Congress intended that home visits be utilized in assessing eligibility. 400 U.S. at 315-16, 318-21. Likewise, *Snell v. Wyman*, 281 F.Supp. 853 (S.D.N.Y.), *aff'd* 393 U.S. 323 (1968), is inapposite. The court in *Snell* assessed New York's provisions for recovery of after-acquired assets *not* in light of §602(a)(10), but in light of the Constitution and the broad purposes of the AFDC program. Moreover, *Snell* was decided before this Court's decisions in *King v. Smith*, 392 U.S. 309 (1968), *Townsend*, and *Carleson*; this Court's summary affirmance can hardly be considered persuasive as to an issue never treated by the District Court. The fallacy in the purported distinction of the *Amicus* is that most cases can be characterized in a variety of ways. Thus, the condition enjoined in *Townsend* can be viewed either as a narrowing of the class of eligibles *or* as a prohibition on college attendance. Similarly, the New York Work Rules can be viewed either as a narrowing of the eligibility conditions contained in 42 U.S.C.A. §§606, 607 and 602(a)(19)(A) or as a requirement that AFDC recipients do certain specified acts.

hard to imagine. In the NOLEO cases, the states pointed to provisions of the Social Security Act concerning support and paternity [42 U.S.C. §§602(a)(11), (17)], and asserted that their eligibility conditions merely furthered the goals of those provisions. The courts rejected that argument, since Congress had not authorized denial of assistance and had strictly delineated the manner in which these undenied goals were to be achieved. In this case, New York seeks to terminate AFDC benefits for failure to comply with a myriad of work-related eligibility conditions [see Brief of Appellees at 38-39], and points to the provisions of WIN, asserting that the Work Rules merely further the goals of the Social Security Act. But like the NOLEO cases, in this case there is absolutely no indication of Congressional authorization for the eligibility conditions imposed by the Work Rules. And, like the NOLEO cases, Congress has strictly delineated the way in which AFDC recipients are to be required to work—through the WIN program. The absence of Congressional authorization in this case is even clearer than in the NOLEO cases, however. Congress has *specifically created* a work-related "condition of eligibility" [42 U.S.C.A. §602(a)(19)(A)], so that the New York Work Rules literally *vary* federal eligibility standards.[4]

[4]The *Amicus* apparently alters its interpretation of §602(a)(10) depending upon the circumstances of particular cases. Thus, in arguing against a finding of preemption by WIN of the states' power to impose their own compulsory work requirements on appeal of *Jefferies v. Sugarman*, ___ F. Supp. ___, No. 71 Civ. 2060 (S.D.N.Y. July 11, 1972), HEW stated:

"Acceptance of employment by an employable person as a condition of eligibility is, apart from the WIN program, a product of state laws and regulations. *It is not a condition of eligibility required by the Social Security Act to be imposed on otherwise eligible AFDC applicants and recipients, nor is*

The *Amicus* asserts that there has been an "historical understanding" that the States may impose additional requirements, including compulsory work requirements, "so long as their policies are in harmony with expressed federal purposes and do not take the form of *de facto* amendments to the federal definition provisions." Brief of the United States at 12. Whatever may have been the "historical understanding" of HEW and the states, this was not the understanding of Congress. See *supra*, pages 1-3; Brief of Appellees, pages 27-37. And it is to Congressional understanding that we must look under *Townsend* and *Carleson* in assessing state imposed eligibility conditions.

State choice in the matter recognized by the Act. It could thus be argued that state work programs such as New York's are incompatible with the Social Security Act as interpreted by the Supreme Court in *Townsend* because they involve eligibility conditions which are not sanctioned by the Act or by its legislative history, without getting into the question of whether the WIN program preempts the state's work rules by federal and state standards."

United States Department of Health, Education, and Welfare, Memorandum of Law *Amicus Curiae* in *Jefferies v. Sugarman*, No. 72-8108 (2d Cir.), at 5. (Emphasis supplied.)

Interestingly, in support of this suggestion, HEW cited the very NOLEO cases ignored by *Amicus*. *Ibid.* See NWRO Brief at 13-15.

CONCLUSION

The judgment of the District Court should be affirmed.

Dated:

Respectfully submitted,

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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES ET AL. *v.* DUBLINO ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

No. 72-792. Argued April 17-18, 1973—Decided June 21, 1973*

The 1967 amendments to the Social Security Act included the Federal Work Incentive Program (WIN), designed to help individuals on welfare become wage-earning members of society. The States were required to incorporate this program into their Aid to Families With Dependent Children (AFDC) program, to provide that certain "employable" individuals, as a condition for receiving aid, shall register for manpower services, training, and employment. In 1971 New York enacted provisions of its Social Welfare Law commonly referred to as the New York Work Rules, which similarly required cooperation by employable individuals to continue to receive assistance. Appellees, New York public assistance recipients subject to the Work Rules, challenge those Rules as having been pre-empted by the WIN provisions of the Social Security Act. The three-judge District Court ruled that "for those in the AFDC program, WIN pre-empts the New York Work Rules." *Held:*

1. The WIN provisions of the Social Security Act do not pre-empt the New York Work Rules of the New York Social Welfare Law. Pp. 7-17.

(a) There is no substantial evidence that Congress intended, either expressly or impliedly, to pre-empt state work programs. More is required than the apparent comprehensiveness of the WIN legislation to show the "clear manifestation of [congressional] intention" that must exist before a federal statute is held "to

*Together with No. 72-802, *Onondaga County Department of Social Services et al.* v. *Dublino et al.*, also on appeal from the same Court.

Syllabus

supersede the exercise" of state action. *Schwartz* v. *Texas*, 344 U. S. 199, 202–203. Pp. 7–12.

(b) Affirmative evidence exists to establish Congress' intention not to terminate all state work programs and foreclose future state cooperative programs: WIN is limited in scope and application; it is a partial program, with state supplementation, as illustrated by New York; and the Department of Health, Education, and Welfare, responsible for administering the Social Security Act, has never considered WIN as pre-emptive. Pp. 12–15.

(c) Where coordinate state and federal efforts exist within a complementary administrative framework in the pursuit of common purposes, as here, the case for federal pre-emption is not persuasive. Pp. 15–16.

2. The question of whether some particular sections of the Work Rules might contravene the specific provisions of the Social Security Act is not resolved, but is remanded to the District Court for consideration. Pp. 16–17.

348 F. Supp. 290, reversed and remanded.

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and DOUGLAS, STEWART, WHITE, BLACKMUN, and REHNQUIST, JJ., joined. MARSHALL, J., filed a dissenting opinion, in which BRENNAN, J., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 72-792 AND 72-802

New York State Department of Social Services et al., Appellants,
72-792 v.
Dolores Dublino et al.

Onondaga County Department of Social Services et al., Appellants,
72-802 v.
Dolores Dublino et al.

On Appeals from the United States District Court for the Western District of New York.

[June 21, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question before us is whether the Social Security Act of 1935 bars a State from independently requiring individuals to accept employment as a condition for receipt of federally funded aid to families with dependent children. More precisely, the issue is whether that part of the Social Security Act known as the federal Work Incentive Program, pre-empts the provisions of the New York Social Welfare Law commonly referred to as the New York Work Rules. A brief description of both the state and federal programs will be necessary.

The Work Rules were enacted by New York in 1971 [1] as part of Governor Rockefeller's efforts to reorganize

[1] The basic provisions of the Work Rules at the time this action was brought are set forth in § 131 of the New York Social Services Law (52A McKinney's Cons. Laws § 131 (4)):

"4. No assistance or care shall be given to an employable person

the New York Welfare Program. Their aim, as explained by the Governor, is to encourage "the young and able-bodied, temporarily in need of assistance through

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who has not registered with the nearest local employment agency of the department of labor or has refused to accept employment in which he is able to engage.

"A person shall be deemed to have refused to accept such employment if he:

"a. Fails to obtain and file with the social services district at least once in every two-week period a new certificate from the appropriate local employment office of the state department of labor stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent employment in which the applicant is able to engage, or

"b. wilfully fails to report for an interview at an employment office with respect to employment when requested to do so by such office, or

"c. wilfully fails to report to such office the result of a referral to employment, or

"d. wilfully fails to report for employment. Such wilful failures or refusal as above listed shall be reported immediately to the social services district by such employment office.

"For the purposes of this subdivision and subdivision five, a person shall be deemed employable if such person is not rendered unable to work by: illness or significant and substantial incapacitation, either mental or physical, to the extent and of such duration that such illness or incapacitation prevents such person from performing services; advanced age; full-time attendance at school in the case of minor, in accordance with provisions of this chapter; full-time, satisfactory participation in an approved program of vocational training or rehabilitation; the need of such person to provide full-time care for other members of such person's household who are wholly incapacitated, or who are children, and for whom required care is not otherwise reasonably available, notwithstanding diligent efforts by such person to obtain others to provide such care. A person assigned to and participating in a public works project under the provisions of section one hundred sixty-four or three hundred fifty-k of this chapter shall be deemed to be employable but not employed.

"Every employable recipient of public assistance or person who is deemed not to be employable by reason of full-time satisfactory participation in an approved program of vocational training or rehabili-

no fault of their own, to achieve the education and the skills, the motivation and the determination that will make it possible for them to become increasingly self-sufficient, independent citizens who can contribute to and share in the responsibility for their families and our society." [3]

To achieve this, the Work Rules establish a presumption that certain recipients of public assistance are employable [5] and require those recipients to report every two weeks to pick up their assistance checks in person; to file every two weeks a certificate from the appropriate public employment office stating that no suitable employment opportunities are available; to report for requested employment interviews; to report to the public employment office the result of a referral for employment; and not to fail willfully to report for suitable employment, when available. In addition to establishing a system of referral for employment in the private sector of the economy, the Work Rules permit the establishment of public works projects in New York's social service districts.[6] Failure of "employable" persons

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tation shall receive his public assistance grants and allowances in person from the division of employment of the state department of labor, in accordance with regulations of the department."

Section 350 (k) of New York Social Services Law (52A McKinney's Cons. Laws 350 (k) provides for public works project employment for employable recipients of AFDC who cannot be placed in regular employment.

[3] Special Message to the New York State Legislature, March 29, 1971 (Brief for Appellants, p. 9).

[5] For the statutory definition of persons deemed "employable" see n. 1, *supra*.

[6] See n. 1, *supra*. These provisions for employment of recipients in public works projects have not been implemented, as the HEW Regional Commissioner indicated that such projects would not be approved for federal aid. Appellant's Brief, p. 13.

to participate in the operation of the Work Rules results in a loss of assistance.[6]

Like the Work Rules, the federal Work Incentive Program (WIN) is designed to help individuals on welfare "acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society . . . . ," 42 U. S. C. A. § 630. The program was enacted as part of the 1967 amendments to the Social Security Act,[6] whereby States were required to incorporate the Work Incentive Program into their AFDC plans. 42 U. S. C. A. § 602 (a)(19), § 630 *et seq.* Every state AFDC plan must provide that certain "employable" individuals, as a condition for receiving aid, shall register for manpower services, training, and employment under regulations promulgated by the Secretary of Labor. 42 U. S. C. A. § 602 (a)(19)(A).[7] Available services, to be provided by the State,

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[6] See n. 1, *supra*, and Social Services Administrative Letter, 71 PWD–43 which reads in relevant part:

". . . the Laws of 1971 place a renewed and expanded emphasis on restoring all employable recipients of public assistance to employment in the regular economy. Accordingly, all unemployed employable persons applying for or receiving public assistance are not only required to register at the New York State Employment Service district office in their community, and report there regularly for appropriate employment counseling services and job referral; but, effective July 1, they will also pick up their assistance checks there. The penalty for not cooperating in this procedure is ineligibility for public assistance whether the individual is the grantee head of family, single person living alone, or non-grantee non-head of family."

[6] In 1971, further amendments dealing with the WIN program were enacted. Act of Dec. 14, 1971, Pub. L. 92–223, 85 Stat. 808.

[7] 42 U. S. C. A. § 602 (a):

"§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary

"(a) A State plan for aid and services to needy families with children must

[*Footnote 7 continued on p. 5*]

must include "such health, vocational rehabilitation, counseling, child care, and other such supportive services as are necessary to enable such individuals to accept employment or receive manpower training . . . ." 42 U. S. C. A. § 602 (a)(19)(G). After the required services have been provided, the State must certify to the Secretary of Labor those individuals who are ready for employment or training programs, 42 U. S. C. A. §§ 602 (a)(19)(G), 632, 633.[8] Employment consists both of work in the regular economy and participation in public service programs. 42 U. S. C. A. §§ 630, 632, 633. As with the Work Rules, cooperation in WIN is necessary for employable individuals to continue to receive assistance.

"(19) provide—

"(A)that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, and employment as provided by regulations of the Secretary of Labor, unless such individual is—

"(i) a child who is under age 16 or attending school full time;

"(ii) a person who is ill, incapacitated, or of advanced age;

"(iii) a person so remote from a work incentive project that his effective participation is precluded;

"(iv) a person whose presence in the home is require because of illness or incapacity of another member of the household;

"(v) a mother or other relative of a child under the age of six who is caring for the child; or

"(vi) the mother or other female caretaker of a child, if the father or another adult male relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor under section 633 (g) of this title to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph)."

[8] States are penalized by a reduction in assistance if they fail to certify to the Secretary of Labor at least 15% of the average number of those registered each year. 42 U. S. C. § 603 (c).

In the court below, appellees, New York public assistance recipients subject to the Work Rules, challenged those Rules as violative of several provisions of the Constitution and as having been pre-empted by the WIN provisions of the Federal Social Security Act. The three-judge District Court rejected all but the last contention. 348 F. Supp. 290 (1972). On this point, it held that "for those in the AFDC program, WIN pre-empts"[9] the New York Work Rules. *Id.*, at 297.[10] As this holding not only affected the continued operation of the New York rules but raised serious doubts as to the viability of the supplementary work programs in 22 States, we set the cause for argument, 409 U. S. 1123 (1973).[11] We now reverse this holding.

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[9] The District Court and the parties in this case have used the word "pre-emption" in a rather special sense. This is not a case involving arguable federal pre-emption of a wholly independent state program dealing with the same or a similar problem. Cf., *e. g.*, *Huron Portland Cement Co.* v. *Detroit*, 362 U. S. 440, 446 (1959). AFDC is a federal statutory program, of which the WIN program is a part. The State Work Rules also were promulgated as part of the implementation of AFDC, and are therefore not wholly independent of the federal program. With this caveat, however, we will preserve the District Court's usage, which has the advantage of focusing attention on the critical question: whether Congress intended the WIN program to provide the exclusive mechanism for establishing work rules under AFDC.

[10] The court found additional points of conflict between the state and federal programs with regard to procedures for termination of benefits and the presence of certain hearings and counseling services under WIN which were absent from the Work Rules. 348 F. Supp., at 295–297.

[11] We postponed consideration of the question of jurisdiction to the hearing on the merits. We now conclude that the constitutional questions raised by appellees were not so insubstantial as to deprive the three-judge District Court of jurisdiction.

As to appellees' due process claim, the court below directed the

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The holding of the court below affects the Work Rules only insofar as they apply to AFDC recipients. 348 F. Supp., at 297, 300, and n. 5. New York's Home Relief program, for example—a general state assistance plan for which there is no federal reimbursement or support [12]—remains untouched by the Court's pre-emption ruling. As to AFDC participants, however, the decision below would render the Work Rules inoperative and hold WIN "the exclusive manner of applying the carrot and stick" in efforts to place such recipients in gainful employment. 348 F. Supp., at 300.[13]

This is a sweeping step that strikes at the core of state prerogative under the AFDC program—a program which this Court has been careful to describe as a "scheme of cooperative federalism." *King* v. *Smith*, 392 U. S. 309, 316 (1968); *Dandridge* v. *Williams*, 397 U. S. 471, 478 (1970); *Jefferson* v. *Hackney*, 406 U. S. 535, 542 (1972). It could impair the capacity of the state government to deal effectively with the critical problem of mounting welfare costs and the increasing financial dependency of many of its citizens. New York has a legitimate interest in encouraging those of its citizens

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State to implement suitable means of informing Home Relief recipients of their hearing rights. 348 F. Supp., at 299. The State stipulates that this has been done. Tr. of Oral Arg., pp. 19–20. The only issue which we address on this appeal is whether the state program is superseded in whole or in part by federal law.

[12] The AFDC program is jointly financed by the States and Federal Government. *Dandridge* v. *Williams*, *supra*, at 473.

[13] Appellees' position is also one of "complete exclusion" of the Work Rules, at least with regard to AFDC recipients. Tr. of Oral Arg., p. 34; Brief for Appellees in Response to Brief for the United States as *amicus curiae*, pp. 2–3.

who can work to do so, and thus contribute to the societal well-being in addition to their personal and family support. To the extent that the Work Rules embody New York's attempt to promote self-reliance and civic responsibility, to assure that limited state welfare funds be spent on behalf of those genuinely incapacitated and most in need, and to cope with the fiscal hardships enveloping many state and local governments, this Court should not lightly interfere. The problems confronting our society in these areas are severe, and state governments, in cooperation with the Federal Government, must be allowed considerable latitude in attempting their resolution.

This Court has repeatedly refused to void state statutory programs, absent congressional intent to pre-empt them.

> "If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed." *Schwartz* v. *Texas*, 344 U. S. 199, 202–203 (1952).

See also *Engineers* v. *Chicago, R. I. & P. R. Co.*, 382 U. S. 423, 429 (1966); *Huron Portland Cement Co.* v. *City of Detroit*, 362 U. S. 440, 446 (1959); *Mintz* v. *Baldwin*, 289 U. S. 346, 350 (1933); *Savage* v. *Jones*, 225 U. S. 501, 533 (1912).

This same principle relates directly to state AFDC programs, where the Court already has acknowledged that States "have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." *King* v. *Smith*, *supra*, at 318–319; *Dandridge* v.

Williams, *supra*, at 478; *Jefferson* v. *Hackney*, *supra*, at 541. Moreover, at the time of the passage of the federal work incentive program in 1967, 21 States already had initiated welfare work requirements as a condition of AFDC eligibility.[14] If Congress had intended to pre-empt state plans and efforts in such an important dimension of the AFDC program as employment referrals for those on assistance, such intentions would in all likelihood have been expressed in direct and unambiguous language. No such expression exists, however, either in the federal statute or in the committee reports.[15]

Appellees argue, nonetheless, that Congress intended to pre-empt state work programs because of the comprehensive nature of the WIN legislation, its legislative history,[16] and the alleged conflicts between certain sections of the state and federal laws.[17] We do not agree. We reject, to begin with, the contention that pre-emption is to be inferred merely from the comprehensive character of the federal work incentive provisions, 42 U. S. C. § 602 (a)(19), § 630 *et seq.* The subjects of modern social and regulatory legislation often by their very nature require intricate and complex responses from the

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[14] See Brief for the United States as *amicus curiae*, p. 12. The information was derived from a survey of state plans conducted by the Department of Health, Education, and Welfare.

[15] No express intention to eliminate co-existing state work programs appears either at the time of the original 1967 enactment of the WIN program, see S. Rep. No. 744, 90th Cong., 1st Sess., at 26, 145–157; H. R. Rep. No. 1030, 90th Cong., 1st Sess., at 58–59, or at the time of the 1971 amendments, n. 6, *supra*.

[16] The court below also asserted that the legislative history was supportive of a pre-emptive intent, 348 F. Supp., at 297, but no legislative history is cited for that proposition.

[17] In view of our remand, Part III, *infra*, we do not reach the issue of specific alleged conflicts. In sum, however, they are not sufficient to indicate pre-emptive intent, especially in light of the impressive evidence to the contrary.

Congress, but without Congress necessarily intending its enactment as the exclusive means of meeting the problem, cf. *Askew* v. *American Waterways*, — U. S. — (1973). Given the complexity of the matter addressed by Congress in the federal work incentive program, a detailed statutory scheme was both likely and appropriate, completely apart from any questions of preemptive intent. This would be especially the case when the federal work incentive provisions had to be sufficiently comprehensive to authorize and govern programs in States which had no welfare work requirements of their own as well as cooperatively in States with such requirements.

Appellees also rely, as did the District Court, on the legislative history as supporting the view that "the WIN legislation is addressed to all AFDC recipients, leaving no employable recipients to be subject to state work rules." Brief, p. 29. The court below pointed to no specific legislative history as supportive of its conclusion. Appellees do cite fragmentary statements which we find unpersuasive. Reliance is placed, for example, on a statement in the report of the House Ways and Means Committee on the WIN legislation as follows:

> "Under your committee's bill, States would be required to develop a program *for each appropriate* relative and dependent child which would assure, to the maximum extent possible, that each individual would enter the labor force, *in order to become self-sufficient*. To accomplish this, the states would have to assure that *each* adult in the family, and each child over age 16 who is not attending school is given, when appropriate, employment counselling, testing and job training." (Emphasis supplied by appellees.) H. R. Rep. No. 544, 90th Cong., 1st Sess., at 16 (1967).[18]

[18] Other citations to similar effect appear in Appellee's Brief, pp. 29–30.

At best, this statement is ambiguous as to a possible congressional intention to supersede all state work programs.[19] "Appropriateness," as used in the Committee Report, may well mean "appropriateness" solely within

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[19] Perhaps the most revealing legislative expressions confirm, subsequent to enactment, a congressional desire to preserve supplementary state work programs, not to supersede them. In the wake of the invalidation of the New York Work Rules by the three-judge District Court, members of the New York congressional delegation became concerned that the court had misconstrued the intent of Congress. The following colloquy occurred between Senator Buckley of New York and Senator Long of Louisiana, Chairman of the Finance Committee which considered the WIN program prior to approval by the Senate:

"Mr. Buckley: Was it ever the intention of Congress at that time to have the provisions of the WIN statutes preempt the field of employment and training for ADC recipients?

"Mr. Long: I did not have that in mind. . . .

"Mr. Buckley: . . . So far as the distinguished chairman is concerned, was it ever the intention of at least this body to have a preemption in the field?

"Mr. Long: It was never our intention to prevent a State from requiring recipients to do something for their money if they were employable. . . ." 118 Cong. Rec. S. 18492, Oct. 17, 1972.

In the House of Representatives, a similar dialogue took place between Congressman Carey of New York and Congressman Mills, Chairman of the House Ways and Means Committee, which considered the WIN program:

"Mr. Carey: My specific question for the chairman has to do with the intent of the Congress in authorizing the WIN program in 1967 and in amendments to that program in subsequent years. It is my understanding that Congress intended, through the WIN program, merely to assist the States in the critical area of guiding able-bodied welfare recipients toward self-sufficiency—and not to supersede individual State programs designed to achieve the same end. Under this interpretation, New York and other States could operate their own programs as supplementary to the Federal WIN program. Is my understanding of the congressional intent in this area correct?

"Mr. Mills: I agree with the interpretation of my friend, the gentleman from New York, on the matter, so long as the State program does not contravene the provisions of Federal law." 118 Cong. Rec., H. 10212, Oct. 17, 1972.

the scope and confines of the WIN program. Furthermore, the language employed by Congress in enacting the WIN program must be considered in conjunction with its operational scope and level of funding, which, as will be shown, is quite limited with respect to the total number of employable AFDC recipients, Part II, *infra*.

In sum, our attention has been directed to no relevant argument which supports, except in the most peripheral way, the view that Congress intended, either expressly or impliedly, to pre-empt state work programs. Far more would be required to show the "clear manifestation of [congressional] intention" which must exist before a federal statute is held "to supersede the exercise" of state action. *Schwartz* v. *Texas*, *supra*, 202–203.

II

Persuasive affirmative reasons exist in this case which also strongly negate the view that Congress intended, by the enactment of the WIN legislation, to terminate all existing state work programs and foreclose additional state cooperative programs in the future. We note, first, that the WIN program itself was not designed on its face to be all embracing. Federal work incentive programs were to be established only in States and political subdivisions

> "in which he [the Secretary of Labor] determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children. In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established." 42 U. S. C. A. § 632 (a).

This section constitutes an express recognition that the federal statute probably would be limited in scope and application.[20] In New York, this has meant operation of WIN in only 14 of New York's 64 social service districts, though these 14 districts do service approximately 90% of the welfare recipients in the State. Yet the Secretary of Labor has not authorized additional WIN programs for the other districts, resulting in a lack of federal job placement opportunities in the more lightly populated areas of States and in those without adequate transportation of potential enrollees to districts with WIN programs.[21]

Even in the districts where WIN does operate, its reach is limited. In New York, according to federal estimates, there are 150,000 WIN registrants for the current fiscal year, but the Secretary of Labor has contracted with the State to provide services to only 90,000 registrants, of whom the majority will not receive full job training and placement assistance.[22] In fiscal 1971, New York asserts that "17,511 individuals were referred for participation in the WIN program, but the Federal Gov-

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[20] The WIN guidelines, issued by the United States Department of Labor, provide, according to appellants, for establishment of WIN programs only in those areas where there are at least 1,100 potential WIN referees, Brief, p. 37.

[21] See Appellant's Brief, pp. 37–38. 42 U. S. C. § 602 (a)(19)(A)(iii) may also have contemplated limited application of the federal work incentive program, since it exempts from WIN registration "a person so remote from a work incentive project that his effective participation is precluded."

[22] See Brief for the United States as *amicus curiae*, p. 15, citing U. S. Dept. of Labor, Manpower Administration, Contract No. 36-2-0001-188, modification No. 3, June 20, 1972. The Government contends further that "the current level of WIN funding is such that no more than one-fifth of the WIN registrants will receive the full job training and placement assistance contemplated by the Act." Brief, p. 15.

ernment allowed only 9,600 opportunities for enrollment." [23] California claims "over 122,000 employable AFDC recipients" last year, but only 18,000 available WIN slots.[24]

It is evident that WIN is a partial program which stops short of providing adequate job and training opportunities for large numbers of state AFDC recipients. It would be incongruous for Congress on the one hand to promote work opportunities for AFDC recipients and on the other to prevent States from undertaking supplementary efforts toward this very same end. We cannot interpret federal statutes to negate their own stated purposes. The significance of state supplementation is illustrated by the experience in New York, where the Work Rules have aided the objectives of federal work incentives: from July 1 through September 30, 1971, the first months of the Work Rules' operation, the State Employment Service claimed job placements for approximately 9,376 recipients.[25]

Moreover, the Department of Health, Education, and Welfare, the agency of Government responsible for ad-

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[23] Appellant's Brief, p. 38, 17.

[24] Brief for California as *amicus curiae*, p. 3.

[25] Appellant's Brief, p. 15; appendix, p. 192. Appellants claim further that from January to June 1972, "there were 2,657 job placements under the WIN program," and 5,323 placements under the Work Rules. Brief, p. 18. These figures must be qualified, however, with the observation that many of the job placements are temporary; many of those placed under the Work Rules may have been recipients of forms of assistance other than AFDC (while the number of WIN placements counts only AFDC recipients); and that single recipients may have been referred or placed—and thus statistically tabulated—on more than one occasion. See Appellee's Brief, pp. 33–36. None of these observations, however, obscures the basic fact that the Work Rules materially contribute toward attainment of the objective of the WIN program in restoring employable AFDC recipients as wage-earning members of society. See 42 U. S. C. A. § 630.

ministering the Federal Social Security Act—including reviewing of state AFDC programs—has never considered the WIN legislation to be pre-emptive. HEW has followed consistently the policy of approving state plans containing welfare work requirements so long as those requirements are not arbitrary or unreasonable.[26] Congress presumably knew of this settled administrative policy at the time of enactment of WIN, when 21 States had welfare work programs. Subsequent to WIN's passage, HEW has continued to approve state work requirements. Pursuant to such approval, New York has received federal grants in aid for the operation of its AFDC plan, including its work provisions.[27] In interpreting this statute, we must be mindful that "the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong. . . ." *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367, 381 (1969); *Dandridge* v. *Williams*, *supra*, at 481–482. In this case, such indications are wholly absent.

New York, furthermore, has attempted to operate the Work Rules in such a manner as to avoid friction and overlap with the WIN program. Officials from both the State Department of Labor and a local Social Service Department testified below that every AFDC recipient appropriate for a WIN program was first referred there, that no person was to be referred to the state program who was participating in a WIN program, and that only if there was no position available for him under WIN, was a recipient to be referred for employment pursuant to state statute.[28] Where coordinate state and federal

[26] See Brief for the United States as *amicus curiae*, p. 3, filed by the Solicitor General and joined in by the General Counsel of HEW.

[27] *Ibid.*

[28] Excerpts from Depositions of Nelson Hopper, Director of the Employment Service Bureau of the New York State Dept. of Labor, and George Demmon, Senior Employment Counsellor, Erie County

efforts exist within a complementary administrative framework, and in the pursuit of common purposes, the case for federal pre-emption becomes a less persuasive one.

In this context, the dissenting opinion's reliance on *Townsend* v. *Swank*, 404 U. S. 282 (1971), *Carleson* v. *Remillard*, 406 U. S. 598 (1972), and *King* v. *Smith*, *supra*, is misplaced. In those cases it was clear that state law excluded people from AFDC benefits whom the Social Security Act expressly provided would be eligible. The Court found no room either in the Act's language or legislative history to warrant the States' additional eligibility requirements. Here, by contrast, the Act allows for complementary state work incentive programs and procedures incident thereto—even if they become conditions for continued assistance. Such programs and procedures are not necessarily invalid, any more than other supplementary regulations promulgated within the legitimate sphere of state administration. See *Wyman* v. *James*, 400 U. S. 309 (1971); *Snell* v. *Wyman*, 281 F. Supp. 853, aff'd, 393 U. S. 323 (1969). See also *Dandridge* v. *Williams*, *supra*; *Jefferson* v. *Hackney*, *supra*.

III

We thus reverse the holding below that the federal work incentive program pre-empts the New York Work Rules. Our ruling establishes the validity of a state work program as one means of helping AFDC recipients return to gainful employment. We do not resolve, however, the question of whether some particular sections of the Work Rules might contravene the specific provisions of the Federal Social Security Act.

This last question we remand to the court below. That court did not have the opportunity to consider

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Dept. of Social Services, appendix, pp. 226, 234. See also Appellant's Brief, p. 17, and Tr. of Oral Arg., p. 7.

the issue of specific conflict between the state and federal programs, free from its misapprehension that the Work Rules had been entirely pre-empted. Further, the New York Legislature amended the Work Rules in 1972 to provide, among other things, for exemption of persons engaged in full-time training and vocational rehabilitation programs from the reporting and check pick-up requirements (Chapter 683, N. Y. Laws of 1972), for monthly rather than semi-monthly payments of shelter allowances (*id.*, c. 685) and, most significantly, for a definition of an "employable" AFDC recipient which is claimed by New York to be identical to that now used under WIN (*id.*, c. 941). Inasmuch as the court below did not have the opportunity to consider the 1972 amendments as they related to the issue of potential state-federal conflict, the remand should afford it.

We deem it unnecessary at the present time to intimate any view on whether or to what extent particular provisions of the Work Rules may contravene the purposes or provisions of the WIN program. Such a determination should be made initially by the court below, consistent with the principles set forth in this opinion.[29]

The judgment of the three-judge District Court is reversed and the case remanded for further proceedings in accord with this opinion.

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[29] In considering the question of possible conflict between the state and federal work programs, the court below will take into account our prior decisions. Congress "has given the States broad discretion," as to the AFDC program, *Jefferson* v. *Hackney*, *supra*, at 545; see also *Dandridge* v. *Williams*, *supra*, at 478; *King* v. *Smith*, *supra*, at 318–319, and "so long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act," the courts may not void them. *Jefferson*, *supra*, at 541. Conflicts, to merit judicial rather than cooperative federal-state resolution, should be of substance and not merely trivial or insubstantial. But if there is a conflict of substance as to eligibility provisions, the federal law of course must control. *King* v. *Smith*, *supra*; *Townsend* v. *Swank*, *supra*; *Carleson* v. *Remillard*, *supra*.

SUPREME COURT OF THE UNITED STATES

Nos. 72-792 AND 72-802

New York State Department of Social Services et al., Appellants,
72-792 v.
Dolores Dublino et al.

Onondaga County Department of Social Services et al., Appellants,
72-802 v.
Dolores Dublino et al.

On Appeals from the United States District Court for the Western District of New York.

[June 21, 1973]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

Because the Court today ignores a fundamental rule for interpreting the Social Security Act, I must respectfully dissent. As we said in *Townsend* v. *Swank*, 404 U. S. 282, 286 (1971), "in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." See also *King* v. *Smith*, 392 U. S. 309 (1968); *Carleson* v. *Remillard*, 406 U. S. 598, 600 (1972). The New York Work Rules fall squarely within this statement; they clearly exclude persons eligible for assistance under federal standards, and it could hardly be maintained that they did not impose additional conditions of eligibility.[1] For example, under federal stand-

[1] Appellants state that the Work Rules do not "constitute an additional condition of eligibility for public assistance." Reply

ards, it is irrelevant to a determination of eligibility that a recipient has or has not filed every two weeks a certificate from the local employment office that no suitable employment opportunities are available, yet under the Work Rules, a recipient who fails to file such a certificate is "deemed" to have refused to accept suitable employment, and so is not eligible for assistance. N. Y. Social Services Law § 131 (4)(a) (McKinney 1971).[2] Thus, according to the rules of interpretation we have heretofore followed, the proper inquiry is whether the Social Security Act or its legislative history clearly show congressional authorization for state employment requirements other than those involved in the federal Work Incentive Program.[3]

Brief for Appellants New York State Departments, at 9. The arguments they present, however, relate entirely to the purported congressional authorization for additional conditions of this sort.

[2] The federal conditions of eligibility relating to registration for employment are found at 42 U. S. C. § 602 (a)(19) (Supp. I, 1971).

[3] The United States, as *amicus curiae*, argues that the rule stated in *Townsend* v. *Swank*, 404 U. S. 282 (1971), does not fairly characterize the course of our interpretation of the Social Security Act. It relies primarily on the Court's decision in *Wyman* v. *James*, 400 U. S. 309 (1971). But, for reasons that escaped me at the time, see *id.*, at 345 n. 7, the Court did not address the statutory argument. *Wyman* does not, therefore, express any limitation on the rule in *Townsend*. Similarly, our summary affirmance in *Snell* v. *Wyman*, 393 U. S. 323 (1968), where the District Court did not have before it our opinion in *King* v. *Smith*, 392 U. S. 309 (1968), is at least offset by the summary affirmance in *Carleson* v. *Taylor*, 404 U. S. 980 (1972), *Juras* v. *Meyers*, 404 U. S. 803 (1971), and *Weaver* v. *Doe*, 404 U. S. 987 (1971).

The United States' argument from authority is weak, and its argument as a matter of logic is even weaker. The United States suggests that, while States may not narrow the class of persons eligible for assistance under federal standards, they may impose additional conditions of eligibility in pursuit of independent state policies. This distinction will not withstand analysis, for it makes decision turn on meaningless verbal tricks. One could just as easily

The answer is that neither the Act nor its legislative history show such an authorization. The only relevant work-related conditions of eligibility in the Act are found at 42 U. S. C. § 602 (a)(19) (Supp. I, 1971). In addition to exempting certain persons from registration for and participation in the federal WIN Program,[4] the Act permits States to disregard the needs of persons otherwise eligible for assistance who "have refused without good cause to participate under a work incentive program . . . or . . . to accept employment in which he is able to engage." 42 U. S. C. § 602 (a)(19)(F) (Supp. I, 1971). The Act thus makes *actual* refusal to participate in a WIN Program or to accept employment a permissible ground for denying assistance. In contrast, New York has adopted the none-too-subtle technique of "deeming" persons not to have accepted employment because they have not, for example, obtained a certain certificate from

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find an independent state policy in *Townsend* as a narrowing of the class of eligible persons: the State might have a policy of minimizing subsidies to persons with a clear prospect of future income well above the poverty level, by denying assistance to persons attending four-year colleges while granting it to those attending vocational training schools. Such a system of subsidies would almost certainly be held constitutional under the Due Process Clause, and the position of the United States seems to be that States may impose conditions of eligibility, not squarely in conflict with federal standards, in the pursuit of some constitutional state interest.

[4] For example, no child under 16 or attending school need register. 42 U. S. C. § 602 (a)(19)(A)(i) (Supp. I, 1971). I take it that the Court would find a conflict "of substance," *ante* n. 29, between this provision and a state work requirement applicable to children under 16. For the legislative history is clear that Congress, in defining the work-related conditions of eligibility, "spell[ed] out those people we think should not be required to go to work," as Senator Long put it. 113 Cong. Rec. 32593 (1967). See also S. Rep. No. 744, 90th Cong., 1st Sess., at 2484. The United States' position would be, I assume, that such a provision would narrow the class of persons eligible for assistance.

the local employment office every two weeks. "Deeming" is a familiar legal device to evade applicable requirements by saying that they have been satisfied when they have not in fact been satisfied. But the federal requirement, which the State may not alter without clear congressional authorization,[5] requires an actual refusal to participate in a WIN Program or to accept employment, not a refusal to participate in some other program or a fictitious refusal of employment.[6]

The legislative history of the Social Security Act confirms this interpretation, for whenever Congress legislated with respect to work requirements, it focused on actual refusals to accept employment or to participate in certain special programs clearly authorized by Congress. At no time has Congress authorized States to adopt other work-referral programs or to make refusal to participate in such programs a condition of eligibility, even under the guise of "deeming" such a refusal a refusal to accept employment.

At its inception, the program of aid to dependent children was designed to lessen somewhat the burden of supporting such children. The program provided assistance to children who had been deprived of parental support by reason of the absence of a parent. 49 Stat. 629 (1935). Assistance was provided to supply the needs of such children, thus "releas[ing the parent] from the

[5] Appellants argue that "the provision of section 602 (a)(10) that aid be furnished 'to all eligible individuals' when read within the context of the Social Security Act means individuals 'eligible' under State requirements, not Federal." Reply Brief for Appellants New York State Departments, at 13. We expressly rejected this argument in *Townsend*, 402 U. S., at 286.

[6] The States may of course adopt procedures necessary to insure that offers of employment are transmitted to recipients of public assistance. It hardly needs extended argument, however, to show that the New York Work Rules, taken as a whole, are not necessary to do that.

wage-earning role." H. R. Doc. No. 81, 74th Cong., 1st Sess., at 30 (1935). See also H. R. Rep. No. 615, 74th Cong, 1st Sess., at 10 (1935). Thus, the program's purposes were in many ways inconsistent with a requirement that the parent leave the home to accept employment. Yet, in operation, the original program failed to provide sufficient inducement for the parent to remain at home, since the amount of assistance was measured solely by the child's needs. In order further to relieve the pressures on the parent to leave the home and accept work, Congress amended the Act in 1950 so that the aid would include payments "to meet the needs of the relative with whom any dependent child is living." 42 U. S. C. § 606 (b)(1).

Until 1961, then, the sole emphasis of the Social Security Act's provisions for assistance to dependent children was on preserving the integrity of the family unit.[7] In that year, Congress expanded the definition of dependent child to include children deprived of parental support by reason of the unemployment of a parent. 42 U. S. C. § 607. Families with two parents present could, for the first time, receive assistance, and one parent could leave the home to work without impairing the integrity of the family unit. Congress therefore required States participating in the program for aid to families with an unemployed parent to deny assistance under this provision to individuals who refused to accept bona fide offers of employment. Pub. L. 87–31, 75 Stat. 76 (1961). Refusal of actual offers of employment was clearly the contemplated condition. See S. Rep. No. 165, 87th Cong., 1st Sess., at 3 (1961). Congress then developed this concept, permitting States to establish "Community

[7] In 1956, Congress required States to adopt plans to provide social services to strengthen family life. Pub. L. 84–880, 70 Stat. 807, 848 (1956).

Work and Training Programs" of work on public projects, Pub. L. 87-543, 76 Stat. 172, 186 (1962), repealed by Pub. L. 90-248, 81 Stat. 892 (1968). Refusal to accept a work assignment on such a project without good cause would be a ground for denial of public assistance. See H. R. Rep. No. 1414, 87th Cong., 2d Sess., at 15 (1962).

When Congress established the Work Incentive Program, it did not abandon its previous policies. Recipients of public assistance could be required only to accept bona fide offers of employment or placement in specified programs. There is no indication whatsoever in the legislative history that Congress intended to permit States to deny assistance because potential recipients had refused to participate in programs not supervised by the Secretary of Labor, as WIN Programs are. The parameters of the WIN Program were designed to accommodate Congress' dual interests in guaranteeing the integrity of the family and in maximizing the potential for employment of recipients of public assistance. Without careful federal supervision, of the sort contemplated by the delegation to the Secretary of Labor to establish testing and counseling services and to require that States designed employability plans, 81 Stat. 885, state work programs might upset the accommodation that Congress sought. The Work Incentive Program was thus a carefully coordinated system, whose individual parts fit into an integrated whole. It is hardly surprising that Congress did not expressly or impliedly authorize States to develop independent work programs, since the WIN Program represented Congress' recognition that such programs had to be kept under careful scrutiny if the variety of goals Congress sought to promote were to be achieved.[8]

[8] The original proposal for a Work Incentive Program would have permitted a State to operate Community Work and Training Programs only if a federal WIN Program were not operated in the

I believe that the Court seriously misconceives the purposes of the federal programs of public assistance, in its apparent belief that Congress had the sole purpose of promoting work opportunities, a purpose that precluding additional state programs would negate. *Ante*, pp. 13–14.

Instead, Congress has consistently indicated its desire to adopt programs that will enhance the employability of recipients of public assistance while maintaining the integrity of families receiving assistance. A work-referral program can do this only if it is regulated, both as to the persons required to participate and as to the terms on which they must participate. And Congress has consistently recognized that such regulation requires close federal supervision of work programs. In my view, this course of legislation, which is not mentioned by the Court, is neither "ambiguous," "fragmentary," nor "peripheral," *ante*, pp. 10, 11. No matter how it is viewed, however, one cannot fairly say that the Social Security Act or its legislative history clearly evidences congres-

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State. H. R. 5710, 90th Cong., 1st Sess., § 204 (a). Thus, either a WIN Program or a state program could operate within a State, but not both. In the final version, the pre-existing authorization for Community Work and Training Programs was eliminated, and the federal WIN Program was to be implemented in every State. Again, Congress recognised that federal and state work programs could not coexist.

The 1971 Amendments to the WIN Program, Pub. L. 92–223, further demonstrate Congress' desire to have federal control of work requirements. Each State must establish a "separate administrative unit" to provide social services only in connection with WIN. 42 U. S. C. § 602 (a)(19)(G) (Supp. I, 1971). It would be anomalous for Congress to require the States to devote substantial resources to such a unit in connection with the WIN Program, and yet to permit the States to operate independent work programs using federal funds without providing the special services that Congress thought so important.

sional authorization for making participation in state work programs a condition of eligibility for public assistance.[9]

The policy of clear statement[10] in *Townsend* serves a useful purpose. It informs legislators that, if they wish to alter the accommodations previously arrived at in an Act of major importance, they must indicate clearly that wish, since what may appear to be minor changes of narrow scope may in fact have ramifications throughout the administration of the Act. A policy of clear statement insures that Congress will consider those ramifications,[11] but only if it is regularly adhered to.

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[9] It is unnecessary for me to discuss at any length the Court's analysis of the pre-emption problem. I note, as the Court does, *ante*, n. 9, that this case does not present the classic question of pre-emption, that is, does the enactment of a statute by Congress preclude state attempts to regulate the same subject? There is no question that New York may impose whatever work requirements it wishes, consistent only with constitutional limitations, when it gives public assistance solely from state funds. See *ante*, p. 7. The question here relates to the conditions that Congress has placed on state programs supported by federal funds. The distinction is not without importance, for it makes inapposite the strictures in our earlier cases and relied on by the Court, against lightly interfering with state programs. *Ante*, p. 8. For we must of course be cautious when we prevent a State from regulating an area where, in the absence of congressional action, it has important interests. Holding that the federal WIN Program is the exclusive method of imposing work requirements in conjunction with federally funded programs of public assistance would have no such impact; New York would remain free to operate public assistance programs with state funds, with whatever work requirements it chose.

[10] See H. Hart and A. Sacks, The Legal Process 1240 (tent. ed. 1958).

[11] In this connection, I cannot let pass without comment the extraordinary use the Court makes of legislative "history," in relying on exchanges on the floor of the House and Senate that occurred *after* the decision by the District Court in this case. *Ante*, n. 19. Although reliance on floor exchanges has been criticised in this Court, *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U. S. 384, 395–397 (1951) (Jackson, J., concurring), there is some force to

Finally, it is particularly appropriate to require clear statement of authorization to impose additional conditions of eligibility for public assistance. Myths abound in this area. It is widely yet erroneously believed, for example, that recipients of public assistance have little desire to become self-supporting. See, *e. g.*, L. Goodwin, Do the Poor Want to Work?, 5, 51–52, 112 (1972). Because the recipients of public assistance generally lack substantial political influence, state legislators may find it expedient to accede to pressures generated by misconceptions. In order to lessen the possibility that erroneous beliefs will lead state legislators to single out politically unpopular recipients of assistance for harsh treatment, Congress must clearly authorize States to impose conditions of eligibility different from the federal standards. As we observed in *King* v. *Smith*, 392 U. S. 309, 318–319 (1968), this rule leaves the States with "considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." The Court today quotes this observation but misses its import. The States have latitude to ad-

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the more generally accepted proposition that such exchanges, particularly when sponsors of a bill or committee chairmen are involved, are relevant to a determination of the purpose Congress sought to achieve in enacting the bill. *United States* v. *St. Paul, M. & M. R. Co.*, 247 U. S. 310, 318 (1918). For legislators know how legislative history is made, and they ought to be aware of the importance of floor exchanges. If they disagree with the interpretation placed on the bill in such exchanges, they may offer amendments or vote against it. Thus, Congress, in enacting a statute, may fairly be taken to have endorsed the interpretations offered in such exchanges. None of this is true of post-enactment floor exchanges, which have no bearing on pending legislation and to which a disinterested legislator might well pay scant attention. If Senator Buckley or Representative Carey wished to have a congressional expression of intent on the issue of pre-emption, they were not barred from introducing legislation.

just benefits in the two ways mentioned, but not by imposing additional conditions of eligibility. When across-the-board adjustments like those are made, legislators cannot single out especially unpopular groups for discriminatory treatment.[12]

For these reasons, I would affirm the judgment of the District Court.

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[12] That the possibility of treatment that is so discriminatory as to be unconstitutional is not insubstantial is shown by the Court's brief discussion of the jurisdiction of the District Court, *ante*, n. 11.